

PANAJOTIS KONDYLLIS

# CONSERVATISM

HISTORICAL CONTENT  
AND DEMISE

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**WERNER CONZE**

**IN MEMORIAM**

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## I. The concept of conservatism 11

1. Conservatism in the socio-political and intellectual spectrum of modern times . . . . . 11
2. "Conservatism" as a contemporary political buzzword. . . . . 29

## II. Social-historical content and figure of thought of the anti-absolutist conservatism . . . . . 63

1. Outlook . . . . . 63
2. The legal conception of the *societas civilis* and the modern The concept of sovereignty against its ideological background. . . . . 65
3. The struggle of *societas civilis* against modern sovereignty . . . . . 80
  - a. The Nobility, the State, and the Ambivalences of Conservatism . . . . . 80
  - b. Legitimate and illegitimate absolutism . . . . . 90
  - c. The Right to Resist and Conservative.....Activism . . . . . 102
  - d. The sociopolitical character of the *Standetum*. . . . . 110
4. Ideological leitmotifs of anti-absolutist conservatism . . . . . 124
  - a. Outlook and conceptual history of "„conservation" . . . . . 124
  - b. The primacy of the natural *societas* against the Governmental Power and the (Late) Scholastic Theory of Contract. . . . . 126
  - c. The unity of ethics and politics and the state reason . . . . . 136
  - d. The hubris of autonomous reason and the appeal to tradition and history. . . . . 149
  - e. The group, the individual, and the world order . . . . . 161
- ( Friihe Kritik m moderner Staat und an der kapitalistischen Economy . . . . . 169
5. Peculiarities of the English development from the point of view of antagonism of traditional conception of law and modern one. . . . . Sovereignty idea.181

## III. The counter-revolutionary conservatism and the Neu-

formulation of the legal conception of the <i>societas civilis</i> after .	1789
207	
1. Outlook207	
2. The Conservatives' Consciousness of Continuity or the Revolution as a continuation of absolutism	.210

3. Law, Sovereignty and State Power in Conservative Thought after 1789. . . . .	217	b. English leader . . . .	448
a. The rejection of the feasibility of law and its implications	217	c. Action Française . . . . .	459
b. The rejection of the modern idea of sovereignty and the question of the		d. „Conservative Revolution“	469
Separation of powers . . . . .	226	4. The scattered legacy of conservatism	494
c. Task and Limits of the King's or State's Power . . . . .	236	a. The corporate idea . . . .	494
d. Reaction and dictatorship. . . . .	246	b. Cultural Criticism and the "Left"	500
4. The idea of the <i>societas civilis</i> in the struggle against the modern state.	260	c. The dictatorship and the "rights"	504
a. The conservative conception of the state or society The unity of		5. Conclusion . . . . .	507
Ethics and politics and the rejection of the state reason	260		
b. The Conservative Idea of the Nation . . . . .	286	List of cited writings	509
5. Conservatism and Liberalism . . . . .	297	Index Nominum	532
a. The conservative evaluation of liberalism and the		Index Rerum . . . . .	541
Possibilities of a covenant with him . . . . .	297		
b. The English model: transformations and ambiguities in its			
Evaluation . . . . .	313		
6. The ideological extrapolations of the monistic state-			
of society	322		
a. Theological . . . . .			
322			
b. Anthropological. . . . .	331		
c. Historical philosophical	341		
7. Conservative critique of capitalism and culture.	355		
a. Politics and economics. The Concept of Property and Crisis			
of capitalism . . . . .	355		
b. The anthropological and cultural aspect . . . . .	366		
8. Conservatism, its Intellectuals and the Ideas of			
Enlightenment . . . . .	373		
IV. The dissolution of conservatism and distribution			
of his inheritance . . . . .	387		
1. The assimilation of the nobility by society and the lottery ticket			
of the conservatives from the ideal of the <i>societas civilis</i> .	387		
a. The development in France . . . . .	387		
b. The development in England . . . . .	394		
c. The development in Germany . . . . .	401		
d. The Dissolution of Conservatism in Liberalism in the Face of			
of the socialist danger . . . . .	417		

To my friend DR. F. HORST, whose comments and suggestions have contributed considerably to the linguistic design of this work.

P. K.

2. Conservatives and social policy in the 19th century . . . . .	432
3. The asthetization and reinterpretation of conservative thought motifs In political intellectual movements .	447
a. Outlook . . . . .	447

## 1. Conservatism in the socio-political and intellectual spectrum of the modern era

The basic classification of conservatism as a socio-political and ideological phenomenon in the overall spectrum of the modern era means two things: First, that it is not a historical or even anthropological constant, but a concrete historical phenomenon, i.e. bound to a certain epoch and a certain place, which fades away with this epoch or even before its end, and second, that it cannot be understood only from its hostility to the French Revolution, but best in its confrontation with certain specific, from a conservative point of view, admittedly revolutionary elements of modern times. It can best be understood in its confrontation with certain specific, from a conservative point of view, revolutionary elements of the modern era. But even if there should be general agreement on the twofold thesis formulated in this way, not much is gained in terms of content. Even if there is agreement on the twofold thesis formulated in this way, much will not be gained as long as the decisive characteristics of the epoch in which conservatism was formed, discussed, and finally dissolved are not sufficiently clearly defined - and, moreover, as long as the question of the ultimate social and intellectual historical origin of conservative ideas is not satisfactorily resolved. For the statement that certain ideological positions had only condensed into what has subsequently, been called "conservatism" in the course of the confrontation with certain figures of the modern era does not mean eo ipso that they had emerged ex nihilo and inevitably in this confrontation and <through it. The intensity of the struggle on the bi.ihne indeed made one forget the social and intellectual historical backdrop, so that now the optical exchange suggested itself that conservatism - not merely as a consistently rationalized and modernized sociopolitical stance, but already as an elementarily structured body of thought - was the simple inversion of the (ideologically or politically) revolutionary, i.e. ultimately something derived. It is precisely at this point that we want to start in the following, in order to find the red thread for our elaborations. It should be said in advance, however, that the in itself justifiable and apparently already prevailing tendency to start conservatism not with the hostility against the French Revolution, but already with the rejection of Enlightenment rationalism, is by no means sufficient to exhaust its historical and ideological content: for on the one hand, the period in question is in reality much broader than is usually assumed, and on the other hand, this results in an -

especially with regard to this problem - fatal narrowing of the socio-historical perspective<sup>1</sup> - Conversely, attempts to describe the pre-revolutionary socio-political

<sup>1</sup> Kaufmann (Kons. Partei, 137) already saw "the intellectual-historical origin of conservatism ... in its opposition to the entire world of thought of rationalism. in its opposition to the entire world of rationalist thought. For Mannheim, in turn, the cause of the emergence of conservatism as a conscious, "sense-oriented current" was the fact that "the modern world had become dynamic" (Kons. Denken, 423). This, of course, implies something more than a mere derivation of conservatism from the concrete event of 1789, although Mannheim tends to subsume the conservative content of thought prior to the French Revolution in the fuzzy concept of "traditionalism" or "primal conservatism" (cf. note 3 below). Valjavec has been most consistent in demonstrating that conservatism was "originally conceived not as a counteraction to the French Revolution ... but as a force against rational enlightenment and - to a lesser extent - against the attacks of absolutism" (Entst. d. Kons., 141, cf. Entst. d. pol. Strom., 5). Now Valjavec does not consider only conservatism as a reaction against the Enlightenment, but also every reaction against the Enlightenment as conservatism (see, e.g., Entst. d. pol. Strom., 255 ff), so that finally the specifically conservative structure of thought is lost from view. Moreover, the problems of social and intellectual history of earlier centuries remain foreign to him. The same weaknesses are found in the work of Greiffenhagen, who appropriates and develops Valjavec's basic thesis of conservatism as a reaction against the Enlightenment and its rationalism. The suggestion that there had already been conservative approaches before the eighteenth century is left with the rather amateurish - one must say - reference to Donne's well-known poem about the New Philosophy and its allegedly destructive effect (Dilemma, 41()); the central problem of sovereignty and its ideological background as well as the structure of the ideology of rule of the *societas civilis* (see below chap. II, para. 1) escape Greiffenhagen completely, as do all the previously mentioned scholars. His admittedly one-sided (and as such already criticized by Gerstenberger, Konserv. i. d. Weim. Rep., 332) (Dilemma, 16) is not only at least lenient insofar as the development of modern *political* theory is largely left out, but it also tempts him to want to construct a conservative theory by merely putting together quotations from authors as far apart as Moser and Gehlen, for example. Greiffenhagen knows that in doing so he can be accused of, "historical frivolity," but this makes the matter all the worse for him. On the other hand, Ribhegge rightly argues that conservatism is not merely an ideological phenomenon, but "a complex social process. Moreover, he rightly considers it to be a process that is specific in content and delimited in time; a use of the term beyond its historical limits would render it useless (Konserv., 122, 123). Ribhegge himself makes this mistake, however, when he speaks of conservatism not only in relation to the counter-revolutionary movement after 1789 (with which he mistakenly lets conservatism begin), but also in relation to the bourgeoisie after 1848 and even to the non-revolutionary working class of modern mass society. Since he knows that this is the very thing that he himself demands

(Cons., 125), he resorts to a far-fetched use of cybernetic models and portrays conservatism as a self-regulating control system that is able to adapt to the changes of history thanks to an ever better functioning feedback loop (Cons., 126), 126). This view, however, must lead to a more than historical hypostasis of conservatism; moreover, it is wide of the mark to place at the beginning of conservatism the resistance to the thesis of the feasibility of society, as Ribhegge does, and then to talk of conservatism in the

In both cases, it has been the case that the early modern component of what was later called "conservative" thought, and thus the<sup>2</sup> entire scope of the conservative phenomenon, has hardly been perceived. In both cases, it has been the case that the early modern component of what was later called "conservative" thought, and thus the entire scope of the conservative phenomenon, could hardly be perceived, precisely because the image of the modern era that was being projected in each case, whether in terms of social or intellectual history, was not complete or pragmatic. The elaboration of the mentioned component against the background of the *stricto sensu* relevant ideological trends of the modern era is one of the main goals of this study.

The historical conditionality of the conservative phenomenon becomes factual itself. admitted by those who claim<sup>3</sup> its anthropological rootedness This

modern mass society, which is not least characterized by the general assertion of that thesis. - Of all the noteworthy studies of our problem, as far as I know, only Huntington's questions conservatism's attachment to a particular epoch. For him, conservatism is simply the legitimizing logic of the social system under threat, without regard to place or time; thus, the content of conservatism changes indiscriminately and the formation of a conservative tradition becomes impossible (Conservatism, esp. 455, 468). Quite apart from the fact that this view has no heuristic value, it can be refuted by empirical evidence that from certain medieval authors to the last representatives of conservatism in the nineteenth century, there was a continuity of the tradition<sup>19</sup>. This is a continuity of thought content and structure which must be regarded as an intellectual tradition *stricto sensu*. Nothing similar has existed in any other place or time. Huntington, too, makes little effort to draw examples of conservative ideology from antiquity or the Orient, but places the "first phase" of conservatism in the 16th century.

<sup>2</sup> The description of conservative political theory of the 18th century by Palmer (Zeitalter, 66 ff) is very superficial, although the author, referring to Valjavec, Egret and Lefebvre, professes the valuable insight that conservatism was not simply a reaction to the revolution, but an independent current of the 18th century, in relation to which the revolution itself must be regarded as a reaction (35). Epstein loses himself in the shoals, who conscientiously evaluates many previously overlooked smaller writings, but in conceptual-structural terms often falls short of what has already been achieved in previous research. Although he follows those authors who have striven for a historically useful definition of conservatism, and accordingly understands it as the answer to the challenge of enlightenment and revolution (Ursprünge, 17 ff.), he nevertheless ~~lurches~~ from the concept of conservatism. By setting up three different ideal types of the conservative character (defender of the status quo, reform conservative, reactionary), he comes precariously close to a quasi-psychological-anthropological view of the problem, whereby he is admittedly unable to explain the historically documented and usually frequent case in which one and the same person, with regard to tactical and polemical necessities, i.e. simply following the supreme imperative of power, occupies all three roles alternately or even simultaneously.

<sup>3</sup> Thus, Cecile assumes a "natural conservatism," but he regards the French Revolution as the decisive factor of conservative theory and politics in the full sense, despite conservative approaches at the time of the Reformation, etc. (Conservatism, esp. 24f., 39). (Conservatism, esp. 24f., 39). In a treatise that is more anthropological than historical, Romein has argued that since the Renaissance and the Reformation, but especially since the 18th century, the



have not been able (and, as far as I know, have not even tried) to offer a consistent interpretation of history on the basis of the assumption of the inherent natural disposition of "man" to preserve the existing. In spite of the extremely lenient presentation of the psychological-anthropological theory of conservatism, we will briefly discuss it here, because it is a matter of counteracting the effect of conservative ideology on the scientific analysis of conservatism from the very beginning. It is indeed worth noting how central topoi of conservative self-understanding and conservative self-representation have found their way into conservatism as perceived by non-conservatives as well. Thus, the almost axiomatic thesis put forward by all sides that conservatism arose as a reaction against the French Revolution or already against the Enlightenment reflects, albeit indirectly and distortedly, the conservative view of the nature of conservative man, according to which he is never the first to seek or start a quarrel, but on the contrary is the peace-loving and peace-ready man par excellence, since he lives in accordance with the natural or divine commandment of pious preservation; Only the active violation of this commandment on the part of others unleashes an urge to action in him<sup>4</sup>. However, it is not easy to see why this - if we disregard the value judgments connected with it - should be a specific feature of conservative behavior. No man reacts hostilely to the stimuli of the environment as long as no obstacle stands in the way of his self-preservation or his striving for power; even revolutionaries behaved quite peacefully, if one were to give them

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European nations from the "Universal Human Pattern" and created a new Romein does not explain why only certain people with certain interests and convictions felt this longing and how it was possible that so many people were so determined about their own nature. Romein does not explain why only certain people with certain interests and convictions have felt this longing and how it has been possible that so many have wanted and been able to deny their own nature so doggedly. - Mannheim explicitly resorts to Cecile's category of natural conservatism to support the distinction between the merely "„reactive" traditionalism and the consciously "sense-oriented" conservatism (Kons. Denken, 412 ( ). Despite its highly problematic character (cf. Valjavec, Enst. d. Kons., 141), this distinction is made with the correct intention of grasping conservatism not as a psychological but as a historical category. It must be asked, however, why traditionalism must be regarded as a necessary precursor of conservatism, if Mannheim's statement is correct that there are conservatives who do not behave in a traditionalist way and vice versa (Kons. Denken, 413). The distinction between traditionalism and conservatism, which is usually attributed to Mannheim, comes from Rohden, for whom it has apologetic functions: "„The healthy person is conservative by nature This kind of... conservatism is naturally mute," although it is „the "original cell of theoretical conservatism. Tradition can become a conscious value only when its existence is threatened," as happened through rationalism and revolution (Deutsch. u. franz. Konserv., 96).94,

<sup>4</sup> Cf. Rohden's sentences quoted in the previous note.

The subjects do not offer any resistance and fulfill all their wishes as far as possible. It is not a given psychological-anthropological disposition that is at work here, but rather the relative position, i.e. the concrete position of power of the respective subjects, remains decisive. Only in this perspective it becomes understandable why the victorious revolutionary changes overnight into a zealous defender of the existing, or why the defeated conservative or the conservative fearing defeat lies with violence or even uses it openly. There is no reason to assume that this reorientation of political behavior costs the conservative groups more self-conquest than might be the case with other social forces. Feudal right of resistance and "tyrannicide," fraternization and dictatorship are, as we shall see, historically documented and by no means atypical forms of conservative activism.

Thus, conservatism and activism do not form an irreconcilable opposition, if one only pays attention to the historical reality and does not tend to take at face value the self-representation of the conservatives, which is subsequently designed for polemical purposes. The human type described by them, who allegedly devotes himself to the supraindividual tradition and the higher forces of being in a thoughtful and quasi contemplative way and shapes his concrete behavior accordingly, has hardly existed to any historically noteworthy extent. Long before they were threatened by the revolution, the most important members of the upper classes of civil society led a very active life, whose goal was not least the improvement of their own position of power by gaining office and wealth. If these strata did not undertake a revolt in the later radical and social sense of the word, it was not because they were psychologically incapable of it, but simply because they could not and would not stir themselves up. This banality means that the psychological-anthropological theory of conservatism cannot be correct unless it proves that those who defend the existing do so exclusively or primarily because it is psychologically impossible for them to behave in any other way than peacefully or philanthropically. Such a view, by the way, would imply the absurdity that the rulers, who are resisting revolutionary transformations, were possibly less able to cope with the hard necessities of rule than the ruled or the rebellious. However, it can be proved from the point of view of social history that at least most of those nobles, for example, who preached against revolutionary reason the quiet love and care of tradition in the eternal beauty of God and nature, harbored a very lively and practically incomprehensible feeling of their own superiority, which legitimized their rule, over those who depended on them. Thus, the psychological-anthropological interpretation of conservatism may be countered in general that neither the urge to preserve nor the urge to overthrow characterizes human behavior in general, but the endeavor to preserve or to increase one's own power; to this supreme purpose, sometimes preservation, sometimes overthrow.

Moreover, the assumption of a conservative trait in man has no value for the consideration and understanding of historical phenomena. Here, only such concepts are fruitful, which infer a very specific attitude and behavior in terms of content and concreteness, even if the meant agent is not mentioned by name. The psychological-anthropological concept of conservatism, however, is applied, according to the current usage, both to communist leaders who advocate the primacy of the heavy and power industry within a strictly planned economy, and to American politicians who defend the laissez-faire principle against the domestic "liberals. This opens the door to confusion.

However, the proper capture of the conservative phenomenon also requires the Elimination of another serious and widespread misconception, which has also been carried over from the self-representation of conservatives into scientific research. It is the view that conservatives abhor constructions of thought as such and resort to theory only in resistance to theorizing opponents.<sup>5</sup> This view fits into the idealized image of the conservative living confidently in tradition according to his own natural disposition and not thinking and planning beyond it, but it has very little to do with the historical facts. Thus, it gives the false impression that ideas and ideologies - as systematic constructions of thought as well as weapons - were alien to the pre-revolutionary *societas civilis*. It could not afford to do so, however, because its rule, like any other rule since at least the time of high culture, required legitimation, and, moreover, because every conflict between groups of the ruling upper class sought and found a particular ideological justification, even if this did not go beyond the broader ideological framework of the basic convictions generally prevailing in the *societas civilis*. The theological and political systems of thought designed in the course of such conflicts and legitimation efforts in the Middle Ages do not lag behind the analogous modern constructions, neither in terms of intellectual sophistication nor in terms of systematic universality and general validity. The ideological core, but also many central ideas of the ideology of rule and legitimation of the *societas civilis* have survived into the conservative theory, which was put forward as a response to the Enlightenment and the Revolution, not on the margins, but in the function of the ideal axis, around which conservative thinking now revolved. The evidence of this unbroken continuity, which we will present in this

The argument that conservative theory is a reactive, quasi-reluctant theory is eo ipso refuted. There is an essential difference between the view that conservative theory *was created in* the defense against the Enlightenment or against the Revolution, and the view that in this defense the conservatives of the *eighteenth* and nineteenth centuries had made use of the fearfully given thought of the *societas civilis* and *reformulated* it taking into account the polemical needs of the concrete situation of the time. But if this modernization of traditional thought motifs took place in the form of a reaction against the ideological positions of an enemy, then the establishment of the natural law etc. ideas of the revolutionary *rationa lis* formed the basis of the revolution. If this modernization of traditional thought motifs took place in the form of a reaction against the ideological positions of an enemy, then the establishment of the ideas of natural law, etc., of revolutionary rationalism was no less a reaction against the ideology of domination of the *societas civilis*; indeed, from the very beginning it was a conscious and purposeful argumentative reversal of the latter and in this sense much more reactive in its character than was revolutionary rationalism. In this sense, it is much more deeply reactive in character than the modernized version of conservatism: *for every* position arises as a counter-position and not only or nobly the conservative one, as its apologists, together with those who do not know and clearly distinguish, would have us believe.

On the other hand, the fact that the enemies of the *societas civilis* or of the social rule of the nobility developed a particularly active ideological activity, especially after the 17. On the other hand, the fact that the enemies of the *societas civilis*, or of the social rule of the nobility, developed a particularly active ideological activity, was not due to their particular anthropological nature, but to their concrete situation, in which the lack of decisive social power had to be compensated by their own assertion in the front of the spirit. The abundant production of conservative works, which was not long in coming, proved that the theoretical disposition of the conservatives was by no means inferior to that of their enemies, since they explored in depth all the questions then under discussion and even arrived at insights which proved to be a lasting gain for the just emerging science of society. Their declared aversion to the abstractions of theoretical thought has nothing at all to do with the question of their actual theoretical talent and their concrete handling of the weapons provided by theory - an aversion that was purely polemical, i.e. derived from the aforementioned special role of theory in the arsenal of the enemy. The struggle against abstract theorizing is, in other words, neither to be taken in its nominal value nor to be regarded as an expression of a fixed, psychologically-anthropologically anchored need of the "conservative man," but to be grasped in its concrete function, i.e., in the function of a highly sophisticated, highly political, and highly political, and thus in the function of the "conservative man". If the revolutionaries had appeared under the banner of hostility to theory, the conservatives had had to<sup>6</sup> protect reason and theory - the culture and the culture of the people.

<sup>6</sup> These remarks become understandable only in the context of a general theory of the polemical character and the corresponding symbolic functions of the „mind“, see Kondylis,

<sup>5</sup> Instead of many conservatives who hold this view, see Schoeps, *Konserv. Renewal*, 22. Schoeps also shares the anthropological conservatism interpretation and therefore speaks of the "human substance" etc. (20). (20).



They defended the natural character of society as often as revolutionary ideology was clothed in the garb of Rousseauism. The conservatives' compulsory hostility to theory had to be articulated in a convincing way - precisely because it was meant polemically and not literally - in view of its public effect, and thus it took on a theoretical form; the idealized description of a "healthy" and "organic" society, which did not originate from and did not require any abstract theory, could only be achieved theoretically.

This ambivalence (which also appears in the adherence to rational argumentation with simultaneous rejection of rationalism and denial of the supremacy of reason in man) <sup>7</sup>can be considered contradictory or condemned only if one sees the polemical sense of the argument, takes the declarations of the participants at face value, and forgets that the phenomenon has its counterparts in intellectual history (e.g., theological rational argumentation to prove the limits of human cognitive capacity and the necessity of revelation, or sophisticated syllogism of the Enlightenment emotional or late revelation). (e.g. theological rational argumentation to prove the limits of human cognitive capacity and the necessity of revelation - or sophisticated syllogistics of the Enlightenment philosophy of feeling or of the later philosophy of life against the intellect and for the elementary power of the existentially pulsating feeling, etc., etc.) and therefore not at the specific theories of the participants. ) and therefore is not due<sup>8</sup> to a specific hostility to theory or to its irrationality, but rather to the complicated dialectic of the unconscious relations between "rationalism" and "irrationalism". No less superficial is the view that the alleged innate hostility to theory of conservatism is automatically reflected in its inability to develop a systematic and unified theory (which, of course, is not to be deplored from the point of view of conservative self-understanding). However, one cannot deny the systematic character of conservative theory, if it is meant (as it must be meant) that it proceeds from certain general premises shared by all conservatives, from which the positions on the individual theoretical questions are derived or to which these latter can be (re)traced. The lack of uniformity and the almost unübersehbar diversity in detail depending on place and time is again not a specific characteristic of conservative theory, but is a normal concomitant of the historical life of all great political - and not only political - ideologies. To the connoisseur of the international history of liberalism and democracy or socialism, the enormous variety of their forms from country to country and, one might almost say, from decade to decade should be no secret. Nevertheless, there remain

<sup>7</sup> Rohden makes this observation with regard to the French traditionalists (1800Deutsch. u. franz. Konserv. , 128). Greiffenhagen generalizes it and places it at the center of his reflections on the dilemma of conservatism.

<sup>8</sup> On this highly important point, see the work cited in note 6 and Kondylis, *Aufklärung*, esp. ff.36

In the case of conservatism, certain basic assumptions and attitudes can be recognized at any time, which entitle us to a unified comprehension and representation of the ideological phenomenon in question. The same is true of conservatism, but this can only become visible when its historical content is precisely defined and thus the arbitrary use of the term is put to an end, at least in scientific studies.

Other topoi of conservative self-confidence have also crept into the scientific discussion without damaging effects, namely those with which the conservatives themselves associate particular prejudices of their own attitude. It is therefore necessary to take a closer look at some of the key words of the conservative vocabulary in order to work out their - decisive - polemical aspect and thus to become clear about their historical condition. With the coquettish, i. e. Quite apart from the fact that taking sides with "empiricism" does not represent an empirical judgment, serious epistemological reservations must be raised against the conservative prefixing of the "concrete" in its opposition to the "abstract".<sup>9</sup>First of all, it must be pointed out that the opposition of the abstract and the concrete is itself an abstraction. Every comprehension of the concrete and every definition of what is concrete always takes place within a general conception of reality or a worldly view, which first provides the criteria on the basis of which something is to be considered abstract or concrete - and the conception of reality, in turn, never results from the mere summation of concrete details or individual forms of the concrete, but precisely < 1 through abstraction from the latter.by abstraction from the latter, although it must often seek its positive or negative confirmation and visualization in the "concrete". It is precisely in this search that it defines or even invents the "concrete", and in this sense the ideological abstraction is not the raising of the concrete, but its very presupposition<sup>10</sup>; in the end, the abstract and the concrete are always mixed together to the point of unrecognizability. If this is the case, then the critical question is: who decides what is abstract and what is concrete? The decision about this, especially in politics, is a function of power relations.

<sup>9</sup> Instead of many Schoeps, *Cons.* The topos is regarded as Burke's great legacy,<sup>341</sup> but it has been put forward many times before and used with polemical intent, see below, ch. II, para. 4d.

<sup>10</sup> The factual subjection of the "concrete" to the general conception of reality is expressed - perhaps not entirely unintentionally - in the Marxist-Leninist terminology, according to which only that consideration is to be regarded as concrete which does not isolate things, but rather takes place in their mutual relationship and their totality or from the standpoint of totality.

The main focus is on the concrete and not on an overall conception of "the" reality that is beyond any perspective. This is confirmed not least by what conservatives in each case presented as the concrete and demonstrably formed nothing but a component of a construction aiming at the legitimation and defense of certain interests. If taking sides with the concrete sounds convincing in the first place, the necessary subsequent definition of the content of the concrete brings out the deeper desires and goals of the respective enemies of every abstraction" more or less clearly to the day.

The conservative principle that "healthy" politics should start from the existing real conditions and adapt to them as far as possible is basically just as empty (in logical terms) and polemical (functionally speaking) as the advocacy of empiricism and the concrete that is consequently constricted in various ways. For every policy - the revolutionary no less than the conservative - must know the given circumstances precisely and orient itself to this knowledge if it is to be successful. In this elementary sense, political realism is not a conservative monopoly (otherwise conservatives would not have lost a major political battle), but is one of the natural characteristics of the politically gifted individual or collective of any stripe, just as illusionists and daredevils are to be found in all parties. Thus, when conservatives state the above-mentioned principle, they do not mean it in its nominal value, but in reality they silently load it with certain normative implications, and in this roundabout way they try to derive from the (political) imperative of realistic weighing of existing circumstances and practical possibilities the (moral) imperative of respect for the given reality, and thus to attribute the merit of closer realism exclusively to a certain policy, namely their own. The decisive question in politics, however, is not whether real conditions should be taken into account or not (with this consideration actually begins every practically serious policy), but: for what purpose they are to be taken into account. Conservatives make the logical mistake (which, however, can be ideologically advantageous) of confusing their own ideas of purpose with realism in general. To the extent that there is a conservative realism or a realism in the service of the conservative cause, it is not a product of a natural conservative disposition, as conservatives like to portray it, but rather a negative effect of external coercion. The wise adaptation to the (new) circumstances, of which conservatives sometimes take such pride, usually takes place under the pressure of the enemy, who succeeded, at least in part, in forcing conservatives into a defensive or benign attitude precisely because they originally lacked that wisdom of realistic adaptation with which they subsequently boast - if they survive. Incidentally, an unintended as well as usual result of revolutions is that (some or many) conservatives have their hearts set on the

The "true" progress is discovered and the need to meet the "new situation" is felt.

It is a way of remembering the dynamic organic growth (and not merely the static organic constitution) of society and history.

The above-mentioned examples make clear that behind the conservative topoi there are not self-evident and irrefutable truths, but questions of interpretation, which by their very nature are questions of power. This is no less true for those basic conservative concepts that seem to derive their content from history itself without further mediation. One of these is "tradition". But "tradition" as a concept would only be automatically plausible (admittedly at the price of being colorless and ideologically worthless) if it were to encompass everything that has happened historically without exception or selection. In history, however, nothing occurs without being accompanied or followed by its opposite - neither obedience without insurrection, nor continuity without radical rupture, nor orthodoxy and blessing without heresy and curse. All this is historically attested, and precisely because history as a whole includes all conceivable manifestations, antinomies and possibilities of man, traditions cannot be constructed otherwise than selectively, selection being one of the competences of the (current or sometimes the prospective) ruler<sup>11</sup>. This is the reason why "tradition" does not necessarily have to mean what conservatives want to understand by it; even cynically straightforward and unconstrained "revolutionary" or "democratic" traditions can be concocted in an instant, if this seems to be appropriate for (a) relevant group in society. Similarly, it can be shown that the specifically conservative "tradition" is a construct, quite irrespective of whether the circumstances to which it refers are historically attested and genuine or not: for, assuming the ideal case, the falsity here already lies in the inevitable generalization and absolutization of partial aspects of historical events.

Institutional orders, like traditions, emerge and follow one another in history, and therefore the concept of order per se cannot serve to justify conservatism any more than can the concept of tradition as such. It has always been a bitter irony for the conservatives, who have proclaimed themselves the true guardians of the institutional order indispensable for social life, that their successful enemies have, after a short or long time, been able to bring about a new, more or less well-functioning institutional order. This, of course, will never be seen by conservatives as the

The "real" and "natural" order is recognized, while its actual existence is interpreted as such, even the enemies of conservatism, by wanting to establish a fixed institutional order, are in fact

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<sup>11</sup> Very instructive in this regard is the volume edited by Hobsbawm and Ranger, *The Invention of Tradition*.



the<sup>12</sup> conservative point of view on this neuralgic question. From the historically attested ability of non-conservatives to bring institutional orders into being, however, one can also draw the opposite conclusion, namely that it is possible to live without conservatism and conservatives. Everything that conservatives tend to associate with the concept of order also, or even primarily, thrives in their absence, for their enemy, too, while struggling to consolidate his own rule, is concerned with the preservation of law, hierarchy (inequality), and unjustly or factually secured property - albeit under different auspices and with different content. This is what *must* seem incredible to conservatives: that someone else, namely their own enemy, should be given the role of creating and maintaining the necessary order, as they themselves claim, after the conservatives themselves have been eliminated and possibly destroyed. It is not a question of order per se and in general, as the conservatives like to assume and claim, but rather of the concrete question of interpretation and power: who embodies order, who dictates its rules, and who is its ruler? The identification of a certain order with the order itself, which is as logically suspect as it is ideologically indispensable, is also noticeable when the conception of order extends far beyond the socio-political to take on anthropological or even cosmic dimensions. The conservatives' declared hostility to theory has hardly been able to prevent them from remaining silent in constructions about the eternal world law, the eternal world order, etc., as well as about the determination of man to be derived from them. But precisely because behind these constructions there are in reality questions of interpretation, the enemies of conservatives have not failed to take up concepts such as the "eternal order" for their part and to fill them with the normative contents they like. Conservatives and revolutionaries thus profess natural law in the same way, even if they associate fundamentally different ideas with it, and this common confession confronts both of them with similar, albeit reversed, theoretical difficulties: just as the conservatives have never been able to explain satisfactorily how the revolutionaries have been able to define a whole "natural" or even "eternal order", so the revolutionaries have never been able to define a whole "natural" or even "eternal order". Just as the conservatives have never been able to explain satisfactorily how the revolutionaries were able to upset an entire "natural" or even "divine" order and thus prove themselves stronger than the latter, so the revolutionary natural lawyers have not yet given a convincing answer to the question of how the commandments of nature could be so persistently violated by oppression, violence or alienation.

What has been said so far was not intended as a "refutation" of conservatism from the point of view of a ideology competing with it, especially since, in our opinion, conservatism is dead. However, without a restless reduction of the conservative topoi to

The way to a *historical understanding* of the conservative phenomenon cannot be cleared without an analysis of its polemical content and its polemical function. Conservatism, in other words, becomes visible as a historical phenomenon bound to place and time only when the reasons that appear in its self-understanding as ontological or anthropological categories are grasped and presented in their concrete power-political function. As scholars, we must learn to speak of conservatism as a more or less coherent entity, characterized by specific features, in the history of politics and of the mind, just as we do today with respect to the "Reformation" or the "Enlightenment". In a strictly historical sense, then, conservatism can be defined as the ideological and socio-political current whose goal was the maintenance of the *societas civilis* and the domination of its upper classes. As far as the ideological aspect in particular is concerned, conservatism derives the basic stock of its theories from the theological and socio-philosophical ideas of the *societas civilis*, and therefore it precedes modern and, more specifically, Enlightenment rationalism in time, although the confrontation with the latter constitutes an important - and so far the best, if not the only well known - stage in its development. In socio-political terms, conservatism, in turn, signifies the resistance of the (upper classes of the) *societas civilis* to its dissolution, which first appeared on the historical scene in the form of the modern separation of state and society, to be completed later <by the displacement of the primacy of agrarian economy <by the primacy of industry. The conclusion of this long and complicated process also means the end of conservatism; the historical content of conservatism is exhausted. In other words, in the ideological, socio-philosophical, or anthropo-poietic statements on this process, as well as in the concrete socio-political activity of the ruling upper classes of the *societas civilis* with regard to it. Within this framework of social and intellectual history, conservatism can only be spoken of metaphorically or with polemical or apologetic intent. Along with liberalism and (radical or social) democracy, conservatism is one of the major keywords and movements of the long period marked by the above-mentioned process. But while conservatism practically ended when the separation of state and society (i.e., the modern centralized and uniformly administered state and the rapidly industrializing society dominated by the bourgeoisie) was established across the board, liberalism and democracy tend to end or become meaningless as political concepts as soon as the separation of state and society is abolished anew - not, however, because of an already incipient return to *societas civilis*, but as a result of the victory of the state (i.e., of those social groups that are already in the process of being industrialized). The state (i.e., those social groups that see in the state their most important instrument of power or the protector of their own interests) has triumphed over society (which is dominated by the bourgeoisie). The inflationary and highly

<sup>12</sup> S. e. g. Merkat, Cons. Funktion, Ober72. die Ordnung als konservativen Grundwert see, e.g., Kaltenbrunner, Der schwierige Konserv., 36.

The frequent use made in our days of all three of these terms, so that they often merge into one another and lose their pragmatism, is an unmistakable sign that the end of the epoch from whose socio-political and intellectual life they derived their content, in part or in whole, is approaching and in part has already occurred.

We have already explained why conservative thought cannot be interpreted as a mere reaction against the French Revolution or against Enlightenment rationalism. If conservatives opposed the Enlightenment, it was because they were more or less clear about what they were supposed to oppose; and they were clear about this because they could theoretically rely on the traditional, albeit modernized, ideological and socio-philosophical thought of the *societas civilis*. Not only did the anti-Enlightenment conservatism have its prehistory, but the Enlightenment itself was not a new beginning; rather, it was a phase in the development of the then already matured modern rationalism, which in the 18th century merely brought<sup>13</sup> certain original tendencies to full development. The statement that the conflicts of the 18th century had their prehistory does not mean, however, that the matter is done enough if we begin the history of conservatism with the reaction against the first great generation of typical representatives of modern rationalism - the generation of Galileo, Descartes and Hobbes. Such a procedure would ignore the social-historical and -theoretical side of the problem.

!asses, which in the present case is not only a methodological error, but a would be a real seduction. For it is precisely the primary consideration of the socio-historical and -theoretical aspect that permits' appropriate dati ing here, bearing in mind the fact that conservatism did not first articulate itself with regard to cosmological or ontological questions, but rather in the very field of socio-political thought and action with the direct participation of those directly affected by certain social developments. More specifically, *societas civilis* thought first came into deliberate structural conflict with emerging modern thought when the traditional medieval conception of law and the modern doctrine of sovereignty, which was beginning to take shape during the sixteenth century, converged. This set in motion a movement that was to affect ever wider spheres of socio-political and intellectual life, since both the legal conception of *societas civilis* and the modern doctrine of sovereignty did not concern marginal issues, but were linked to all-round worldly options, even if this was not (entirely) proven from the outset. The proof of this connection, which we will provide in the following, will allow us to follow the intellectual-historical scope of the

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<sup>13</sup> This thesis is explained in detail in Kondylis, *Aufklärung*, esp. 42 ff, ff.170

The aim is to do full justice to the problem without neglecting or even ignoring its socio-political dimension and origin. Only in the light of the above-mentioned evidence it becomes understandable in which specific sense conservatism has resisted modern rationalism.

If the constitutive significance of the rejection of the modern doctrine and practice of sovereignty is recognized for conservatism, then its history must naturally begin with this rejection and place it, together with all its implications, in the center. The struggle against absolutism and the struggle against the liberal and the (from the conservative point of view, essentially the same as the liberal) democratic revolution form the two major phases of this history, which nevertheless remains unified and coherent at all times, because the arguments put forward and the goals pursued in both phases were basically identical. Of course, this continuity was not accidental. For decades before Tocqueville, conservatives were still aware of the inner connection between absolutism and revolution, and long before the latter's powerful emergence at the end of the century, they had been following the first phase of the revolution<sup>18</sup>. They had accused the former of dissolving the *societas civilis*, i.e., of eliminating the traditional conception of law, of separating state from society, morality (religion) from politics, or private from public, of suppressing the collective (the *oikos*) and the forms of rule and life associated with it in favor of the individual as the ultimate social unit, and thus of substituting historically rootless reason, etc., etc., for tradition. But absolutism undertook the dissolution of the *societas civilis* precisely in its capacity as the first historical representative of the modern theory and practice of sovereignty (however much it might have to stop halfway in both respects because of its own social character). The same is true with regard to the Revolution, not only in its democratic but also in its liberal variant: for even if liberalism, in its effort to defy absolutist pretensions, had to raise natural law and political objections to the radical version of modern sovereignty theory and practice, it could, on the other hand, itself only fully flourish on the soil of modern statehood, that is, as a result of and thanks to the dissolution of the *societas civilis*. The continuity in the effect of the forces disintegrating the *societas civilis*, partly in parallel and partly in succession, corresponds to the continuity of the conservative argumentation, which revolves around the above-mentioned questions and their ideological implication or presuppositions, and which - let it be repeated once again - does not take the form of a mere reaction, but rather adapts the traditional thought of the *societas civilis* to the new polemical requirements. Conservative thought, then, owes its own continuity not simply to the need to defend itself against the continuous activity of the successive enemies of the *societas civilis*, even if they are often fighting each other, but rather to the origin of the basic conservative ideas from a very long intellectual and socio-political tradition.

Both this origin and the fact that conservative thought revolves around certain themes and repeats the same leitmotifs in countless variations from the century 16. when it first consciously turned against the modern doctrine and practice of sovereignty until its dissolution in the course of the century 19. can be demonstrated. There is no doubt that <las conservative thought around 1800 undergoes an enrichment, the most important aspects of which remain cultural criticism and the doctrine of dictatorship - the former, namely, as a response to the incipient industrial revolution and the intellectually influential political economy, the latter as an attempt to ward off the revolution precisely with the help of the means of power of the principally rejected modern state. Even the new content, however, hardly modifies this traditional ideological structure; rather, it is integrated into it in the form of an additional argument and a further confirmation. There is evidence that some conservatives around 1800 were aware of the origin of their own ideas from ancient sources and that many were aware of the long history of the dissolution of the *societas civilis* and the correspondingly long prehistory of their party. Modern scholars, however, rarely reach similar insights, if at all, because they are not familiar enough with the idea of the *societas civilis*, so that they can hardly recognize the intricate lines of argumentation of the scholastic theory of society and contract behind the conservative statements about the naturalness of society, for example, which are held up against liberal individualism in the 18th and 19th centuries. The difference of language and terminology - for all the identity of the structure of thought - is in fact the moment that actually distinguishes the earlier conservatism from the anti-Enlightenment and anti-revolutionary one. The latter seems much more modern in linguistic-formal terms, which is why it is easily recognized as such even by those who have mastered no other language than that of modern, i.e. post-18th century, politics and social theory. For the conservatives of the time around and after 1800, under the pressure of the Enlightenment, of which they were often conscious or unconscious shoulders, and with regard to the publicistic effect of their words and writings, have turned away from the traditional, largely scholastically influenced vocabulary and conceptual arsenal of the *societas civilis*, in order to make use of the new, secular and considerably more direct language of their enemies. This contrast between form and content in later conservatism is indeed a sign of decadence and an omen of the imminent final demise of the *societas civilis*, although it arises in the course of an attempt at modernization. Beyond this contrast, however, research must keep in mind the persistence of thought structures in order to trace <las conservative thought in its real duration and development in historical time.

If we want to consistently avoid a merely intellectual-historical, i.e. *ab ovo* misleading, analysis of conservatism and focus on the socio-political aspect, it is not sufficient to derive the general ideological positions of conservatism from its socio-theoretical ones (which in the

The history of conservatism coincides to a large extent with the history of the aristocracy, which obviously means that the end of the aristocracy as a traditionally (Weberian) ruling stratum of society is not yet in sight, but that the historical destinies of that upper class must be present at any time, which has been the natural bearer of the conservative world view and social theory during the whole historical period indicated above. The history of conservatism largely coincides with the history of the aristocracy, which obviously means that the end of the aristocracy as a traditional (in the Weberian sense) ruling class must also entail the end of socially relevant and conceptually pragmatic conservatism. The two great phases in the history of conservatism just mentioned coincide with the two great episodes in the modern history of the nobility: we mean its partly successive and partly simultaneous struggles against the two factors that finally brought it down, namely against the modern state on the one hand and modern industry on the other. The nobility (let us stick to this abstraction for the moment) rationalized these existential struggles by constructions of thought which took into account both long and short term polemical-ideological needs and in which the ideological and confessional mingled with the tactical and expedient in different proportions. This is a point of great importance for the concrete comprehension of the character and history of conservatism. The ambivalences and ambiguities that are evident here at every turn can only be understood in terms of the specific situation of the nobility, depending on time and place. In general, it should be noted that the nobility, for all its fundamental rejection of the absolutism and the modern state, is happy with them to the extent that it believes itself able to use them for its own purposes or against enemies from below; in this belief it is often strengthened by the fact that it occupies the most important positions in the young state apparatus, which has only partially detached itself from the essentially continuing *societas civilis*. But even with economic activities, which in the long run might underpin the *societas civilis*, the nobility resigns itself - at least within certain limits, which vary from country to country and from time to time - insofar as this seems to serve its own interests. The inevitable ambivalence of the relationship of the nobility to the fashionable state and to the fashionable economy has left deep traces in conservative thought, especially in its later phase, so that there can hardly be any question of a satisfactory reconstruction of conservatism without taking these socio-historical factors into account; the fact that the conservative figure of thought has grown together with them provides *eo ipso* proof of its concrete historicity, whereby anthropological etc. constructions are no longer possible. constructions is withdrawn from the ground.

This is, on the whole, the social-historical and intellectual-historical framework within which this investigation will move. A short methodological overview must be prefixed, which concerns the usefulness and limits of the conceptual-historical procedure. It is known that the concept of the



Conservatism in the sense with which we are familiar emerged and spread<sup>14</sup> only in the first decades of the nineteenth century, whereas according to our account the conservative figure of thought is centuries older and began to dissolve just at the time of the appearance of the term that designates it. If this is indeed the case, then there is a contradiction between the genetic and structural analysis based on social and intellectual history and the method oriented exclusively to the history of concepts. Leczteres must indeed remain on the surface, if it refrains from the genetic and structural analysis just mentioned or understands itself as a general substitute for it and thereby lets the thing with its concept emerge. For it is not only possible that a mere word becomes a historically charged concept when it is connected with a social or intellectual structure that emerges at the same time, but also that such a structure, which is present in fear, is only later brought together in a concept. In the former case the conceptual-historical and the genetic-structural go together, but in the latter case they do not. The term can therefore not only be an indicator of a new development, but also the<sup>15</sup> concluding summa sum marum or even the epitaph of a process that has already (essentially) run its course. If the history of concepts does not take this into account and makes the determination of the beginning of a historical development dependent on the registration of a new concept in any case and at any price, then it isolates itself from the real events in their continuity and becomes a linguistic idealism or historical linguistics. In the case of conservatism, a one-sided conceptual-historical orientation leads doubly astray: for here not only does the thing (as the concrete action of certain historical bearers as well as a structure of thought) exist avant la lettre for a long time, but the concept also persists, and even flourishes, long after the original - albeit delayed - conceptualization associated with it has ceased to exist.

- connected thing has perished. This will be shown by the following analysis of the current use of the term conservatism.

<sup>14</sup> For the history of concepts in general, see Vierhaus, Konservativ-Konservatismus. -  
ts Let us recall Bruno Bauer's apt, if a bit not universal, word:  
Historical categories usually only become keywords for individual parties when the thing they denote has perished", The Christian State and Our Time.  
(1841) = Feldziige, 7.

## 2. Conservatism" as a contemporary political buzzword

Our view that conservatism is nothing other than a well-defined, precisely identifiable, and fearfully closed social and intellectual historical phenomenon in the transition from *societas civilis* to the dualism of state and society, can find confirmation in the evidence that those who today are The "conservatives" who call or called themselves "conservatives" had little in common with those who originally bore this name, and filled the old conservative commonplaces, insofar as they are still used, with essentially new content. Hardly any of today's "conservatives" seek to undermine the fundamental separation of state and society (just the opposite is the case), hardly any question equality before the law or "human rights" (no less than that), and hardly any would think of abolishing the boundaries between the private and the public or between legality and morality, which were first established in the struggle against the *societas civilis*; Even the relations between the individual and the collective, or questions such as the freedom of intellectual creation, are as a rule understood by today's "conservatives" in a completely different way than by their alleged predecessors. If this is so, then scientific research is not really faced with the task of explaining the persistence and continuity of conservatism as a concrete historical phenomenon; rather, it must make it comprehensible why the concept of conservatism is used today at all, i.e., what polemical and ideological needs urged its use. It should be noted in advance that the use of the concept of conservatism by contemporary socio-political trends, which have little to do with conservatism as a historical phenomenon or even stand on its antipodes, further obscure the essence of the latter. In conservatism as a historical phenomenon, (much) later positions and ideas are projected, which in reality are not related to conservatism itself, but to the (also much later) use of the concept of conservatism. The fact that today's "conservatives," who primarily fight against revolutionary "totalitarianism," turn the counter-revolutionaries of the time around 1800 into representatives of their own conception of freedom and sometimes even into blasé and skeptical latitudinarian liberals, undoubtedly puts considerable obstacles in the way of grasping the concrete historicity of the conservative phenomenon.

So let us go straight into medias res. Apart from a few historically and politically hardly noteworthy fossils from past times, today those liberals call themselves "conservatives" who have been able to prevent the slide (of a fliigel) of liberalism into positions of social

democracy. This slide began already in the last decades of the nineteenth century, as we shall see, and has since severely tested the inner life of many a liberal party. A satisfactory account of this process would require a substantial recapitulation of the whole history of liberalism from the point of view of one central aspect. Here we must content ourselves with pointing out a neuralgic point. The ideological (and often also political) fusion of a wing of liberalism with social democracy does not take place as an open break with the liberal tradition, but on the detour of a reinterpretation of liberal basic concepts. Thus, the individual is retained as the guiding fundamental value; but whereas old liberalism primarily advocated the inviolability of the rights and property of the individual, keeping in mind, tacitly or not, the already possessing individual, socially oriented liberalism focuses its attention more on the underprivileged and interprets the absolute value or worthiness of the individual. It interprets the absolute value or worth of the individual to mean that the community is obliged not to make him suffer. Freedom as a formal right is, in other words, no longer regarded as a sufficient social underpinning of individualism, although it is always regarded as indispensable and even continues to be defended, at least nominally, against every form of collectivism. Formal law, however, must now be materially secured, and this is the decisive link to social democracy, especially since the latter, even in its Marxist version, has from the beginning claimed not to eliminate the formal rights propagated by liberalism, but to fill them with material content. And since, in turn, as guarantor of the material rights of the individual practically only the modern bi.irocratic social, administrative and welfare state comes into question, social liberalism - if we may call it that for the sake of comprehension - arrives at the point of no return precisely because of liberal-individualism. If we may call it that for the sake of understanding, social liberalism arrives at the demand for more state or more egalitarian mass democracy precisely on the basis of liberal-individualist premises, whereby commonplaces of the liberal tradition or slogans from the heroic era of nineteenth-century liberalism, which have a "progressive" ring to them anyway, are (re)interpreted according to these ideas. Here, of course, the paths of the social liberals diverge from those of the old liberals, who see in material rights the end of the formal (as well as the end of the social differences of position covered or justified by this formality) and who, at least in part, neither want to nor can completely find their way politically in the welfare state and in mass society, nor accept the dissolution of the traditional, at their own discretion style-conscious, bourgeois way of life that is inexorably taking place here. Under these circumstances, two important points of contact arise between the old liberals of our time and the counter-revolutionary conservatives of the 19th century - whereby, of course, their teachings are taken only in their nominal value and are torn away from their concrete historical reference. First of all, the warning of the

The first is a reminder to the conservatives of the time that consistent liberalism would give rise to egalitarian and tyrannical democracy out of its own bosom, that liberalism and democracy were originally related in nature; and the second is a reminder of the originally conservative cultural criticism, which is equally prophetic within the colorful pandemonium of the democratic mass society.

Now, the impression would be wrong that this rather free recollection of the old liberals of truly conservative thought motifs proves the unbroken and straightforward persistence of conservatism at least during the 19th and 20th centuries.<sup>s</sup> For the contemporary use of language is not responsible for the social or intellectual *continuity* of the actual, historical conservatism, but rather for the *transformation or replacement* of liberalism; only this transformation created the atmosphere that made possible a new evaluation of certain conservative ideas, now, of course, detached from their historical context. It can be shown that today's criticism of the egalitarian mass society and the welfare state does not come from conservatives *stricto sensu*, who, by the way, have been criticizing these phenomena for a long time. The contemporary "conservatives" who appear in the name of this critique and express it are in fact resorting to genuinely liberal ideas, whether knowingly or not. To dispense with the obligatory reference to Tocqueville, a study of the writings of the Victorian critics of the democratic tendency published in the last third of the 19th century would be very instructive in this respect.

liberalism, namely those of J. Stephen, Lord Acton, H. Maine, and W. Lecky. These writings emerged, for example, as a direct response to the theoretical attempts of the time, such as those of Green and Bradlaugh, to follow in the footsteps of J. S. Mill to extend liberalism as an optimistic active policy of unlimited progress by the idea of the welfare state, which was in principle allowed to intervene in all spheres of society for the protection and welfare of all individuals. The authors mentioned above defend themselves against this by comparing this radical social liberalism, which nevertheless continues to act in the name of the individual, with Jacobinism, which wanted to force society into abstract patterns, which would inevitably be followed by tyranny.<sup>16</sup> The explicit, highly symbolic demarcation from Jacobinism reveals similarities with counter-revolutionary conservatism, although it lacks any reference to conservative theorists.

<sup>16</sup> On this motif in Acton and Maine, see. Brinton, *Pol. Thought*, 205, 275 ff. In addition to Brinton, who concentrates primarily on Acton and Maine (198ff., 266ff.), summaries of the political thought of representatives of this school of thought can be found in Barker, *Pol. Thought*, esp. 145ff. (on Maine and Stephen) and Lippincott, *Viet. Critics*, 144 et seq. (on Stephen, Maine, and Lecky). Similar views underlie the socio-political thinking of Lord Salisbury, as we shall see in chapter IV, section 1d.

On the other hand, it implies that neither liberalism in toto is condemned nor the ancien regime romantically glorified. These old liberals take exception to two points of radical social liberalism in particular: its extreme individualism, which, by invoking the absolute value of each individual and the resulting duty to protect him socially, amounts in practice to the rootlessness of the individual, and its extreme utilitarian thinking, which is guided exclusively by economic and administrative calculus. The rootless individual and the utilitarian calculus are, in turn, two sides of the same coin, since both lack a firm attachment to given values, leaving as the only force holding society together - or rather dissolving it - the vulgar eudamonism and the psychologically and culturally suspicious idiosyncratic regionality of purpose. Both the return to higher spiritual values stabilizing hierarchies through authority, especially Christian ones, and a strengthening of individual social (not state) structures, starting with the family, are recommended here against the egalitarian welfare state and the cultural and spiritual degeneration connected with it, as well as against the extreme atomization of society in various forms.

The sociopolitical thinking of the so-called "neoliberalism" that emerged programmatically during the Second World War or shortly before it, whose more or less typical representatives or adherents are largely those who today call themselves "conservatives," is characterized by very similar or even identical views. Since it was theoretically formed not least under the impression of the economic crisis of 1929, "neoliberalism," in contrast to its conscious or unconscious old-liberal ancestors, had to pay special attention to national economic issues and propose a series of measures to mitigate cyclical fluctuations (decentralization of industry, expansion of individual self-sufficiency, strengthening of the peasant share in the national economy). Otherwise, however, the main polemical targets remain largely the same: on the one hand, massification and, on the other hand, cultural and moral "decay"<sup>17</sup>. At the root of the "decay", in turn, is the narrowly rationalistic, i.e. merely purposive and utilitarian, spirit. Its derivatives are scientism, positivism, and technicism, which by their very nature have overridden moral values, having previously decomposed and undermined them through permanent criticism; rationalism, in other words, dissolves the values by rejecting all

<sup>17</sup> For the following, see above all Repke, *Gesellschaftskrisis*, 15-23ff., 85 ff., and *Civitas humana*, 112 ff., 133ff., 241 ff. Repke's analyses of intellectual history are often superficial and amateurish.

values to be of equal value, i.e. equally good for certain social functions, depending on time and place, and arrives at skepticism precisely in the attempt to extend the principle of liberal tolerance to all values. Thus there is an inner connection between this liberal rationalism and the disengagement of the members of mass society from tradition and fixed, especially religious, values; the tangible result is economism and the general turn to the vulgar eudamonism of consumption<sup>18</sup>. Rational scientism, in short, is calculating and geissically rootless, that is, fundamentally egalitarian and revolutionary; it constitutes the practical and utilitarian ideology of mass society; the rejection of egalitarian mass society and the birocratic welfare state must therefore go<sup>19</sup> hand in hand with the rejection of rationalism understood in this way. And if in place of state bureaucracy a decentralized society is to be set up, in which individuals are freely and organically bound to obvious collectives, and in which talent and achievement create the natural and healthy gradations between individuals, then the recourse to spiritual and moral values will provide a remedy against dry rationalism. Faced with the final logical and practical consequences of certain basic postulates from the demiurgical phase of liberalism, neoliberals now feel the need to distance themselves from them and to make this post-driatic attempt at demarcation evident by using the adjective "conservative". But this can hardly bring about a resurrection of the concrete content of historical conservatism; in fact, only two different conceptions of the essence of liberalism collide here. This is why Repke, for example. Therefore Repke, for example, when he calls himself "conservative," connects this word with the call for the defense of "a free culture of personality," which actually represents a classical liberal value, in order to add immediately that he understands himself no less as a "liberal revisionist" to whom nothing is further from his mind than the thought of a fundamental fighting position against liberalism as such; As an ideology of a "non-collectivist and non-feudal-medieval society," liberalism is indispensable and it is only necessary to "correct certain fundamental errors of the historical liberalism of the century<sup>19</sup>," such as those mentioned above.s", such as those mentioned above, which have hindered the development of "pure democracy".

<sup>18</sup> Contemporary "conservatives" often oppose the "constant artificial production of new consumer ideas," especially since their "artificial uniformity" impairs the free development of the individual. Thus, for example, Schwarzkopf, *Was ist heute kons...?* The important points of Schwarzkopf's "conservative" program (legitimate authority, freedom, limitation of the welfare state) coincide with the demands of neoliberalism.

<sup>19</sup> The connection, by the way, has been seen and emphasized before; apart from the Victorians mentioned, it appears in a central place in Mallock's writings around 1900. About this Kirk informs, *Cons. Mind*, 345ff.

<sup>20</sup> The constellation of thought is not essentially different in the case of other representatives of this direction, however much they may differ in details and names. The following table shows the differences in the intellectual <sup>21</sup>property rights.

Before considering neo-liberal "conservatism" in more detail, we must mention the important fact that <la>the first characteristic and historically momentous appearance of (old) liberal positions with a "conservative" label took place in England towards the end of the 19th century, i.e. precisely at the time of the Victorian critics of "Jacobin" liberalism mentioned above. The difference between this English phenomenon and neo-liberalism is, of course, that, whereas in the latter the liberal positions were fixed from the outset and the "conservative" shield was put up afterwards, in England a party that was originally connected with the landed interest and therefore had to deal with the "conservative" side of the political spectrum was the "liberal" party.

<sup>20</sup> Social crisis, ff.41

<sup>21</sup> A few examples may illustrate this. Hayek, for example, opposes those "conservatives" who approve of state intervention in the economy, discredit free enterprise and entrepreneurship, and are prepared to use coercion to achieve their own goals; he does not specify which "conservatives" he means, but it is clear that he cannot identify with an anti-liberal "conservatism" any more than Repke can. His subsequent critique of liberalism thus starts from an old-liberal standpoint, which he explicitly places in the intellectual vicinity of Tocqueville and Lord Acton (cf. our reference to the Victorian critics of "Jacobin" liberalism) and distinguishes from etatist liberalism (in the American sense of the word), as well as from the "conservative" viewpoint.

He distinguishes his position "from rationalist continental liberalism or even from the English liberalism of the utilitarians. For his position he chooses the designation "Whig" - but not without recalling the statement of Lord John Russell (around 1850), according to which Whig means as much as "liberal-conservative" (Constitution, esp. 485, 488, 492, 493 note 15). Meyer describes himself as "conservative," which, however, changes little in the matter, since he professes liberal individualism, free enterprise, and parliamentarism, and at the same time opposes rationalist-utilitarian liberalism, which has corroded the belief in an objective moral order (Conserv., esp. 5 ff., 12). Another "conservative," Kaltenbrunner, also tacitly adopts the basic position of neoliberalism; he believes that genuine liberal principles, the preservation of which is the first duty of today's conservatives, can only be defended in our day against a "liberalism" that is not a "liberalism."

The conservative is at the same time "critic and heir of liberalism". The extent to which such "conservatives" are attached to liberalism, even in its unhistorical way of thinking, is testified to by Kaltenbrunner's following sentence: "Formal, abstract, and civic freedom is freedom par excellence. (The Conservative . . . , esp. 7, 18; Der schwierige Konserv., 51). It is to be noted (and regretted from a scholarly point of view) that, under the impression of the neoliberal blending of conservative and liberal terms, definitions of conservatism have been undertaken in which (old) liberalism figures among the varieties of conservatism as a "philosophy of imperfection directed to... the defense of a limited style of politics" that turns primarily against the unlimited faith in progress and the optimistic dirigiste activism of "Jacobin" liberalism. See, for example, O'Sullivan, Conservatism, ff.12

The name "conservative", which was historically rightly used as a sign of a fundamental anti-liberal attitude, was adopted by the moderate liberalism; this was done in an attempt, which was successful in the end, to <little> by the turn (of a wing) of English liberalism towards the utilitarian-welfare-state approach.

The government was able to win over the largely frightened "Jacobinism" of the bourgeoisie even at the price of a de facto disengagement from the (meanwhile freely) weakened landed interest. The result of this grinding was the widespread and de facto enforcement<sup>22</sup> of (old) liberalism. The result of this grinding was the extensive factual assertion of (old) liberal content while retaining the conservatism shield. On the other hand, however, this shield represented something more than an interchangeable sign - and this again not so much because of its historical origin as because of the fact that it now stood not least for the struggle for demarcation against "Jacobin" liberalism. At the same time, the memory of the English "conservatives" of their historical origins permitted a pragmatic and adaptable approach, free from the dogmatic prejudices of Liberalism of pure water, as well as a freer access to the realm of those fixed values (tradition, order, religion, etc.) that were needed in the struggle against radicalism. In this way, a movement emerged that anticipated some of the central ideas of the neoliberalism that came a few decades later. This explains why contemporary British conservatives treat neoliberal doctrines with aplomb and sometimes with a certain condescension, since the tradition of their own party seems to them extensive and more instructive. The end result, after all, remains similar or the same: Heeding the liberal critique of socialism and defending property and private initiative in the economy; rejecting the bureaucratic welfare state and at the same time approving of a certain discreet regulatory function of the state in the face of the impracticability or undesirable consequences of pure laissez-faire; Attempt to overcome the ultimately amoral rationalistic utilitarianism and economism, as well as the individualism without censorship (also) <by resorting to religious and traditional ideas, etc.>. <sup>23</sup>- Convinced of their own merits for the liberal cause, the British conservatives can also be a source of inspiration to those who still call themselves "liberals" or "liberals".

The "liberal party" may calmly recommend that the liberals unite with them against the socialist state<sup>24</sup>. In fact, the socialist danger, in whatever form, has been a decisive reason, especially after World War I, both for the strong tendency of liberals to cling to the "conservative" shield and, conversely, for the readiness of those who (to varying degrees and in different ways) have been following the ideas of the "liberal" party.

<sup>22</sup> For more information on this development, see IV, section b1, d.1

<sup>23</sup> See the influential work of Lord Hailsham, Conservative Case, esp. 19ff., 28ff., (64,70,94, 97,114.

<sup>24</sup> See, e.g., Coote, Cons. and Lib. esp. 207(



The new liberal positions, especially with regard to the inviolability of property and economic freedom, were adopted by those who had remained loyal to the traditional aristocratic conservatism while retaining the conservative label. These shifts must be carefully registered if one is not to fall prey to the misleadership of the specific signs.

The moment that distinguishes neoliberalism from "Jacobin" liberalism also bridges the gap to what is perceived in the new context as "conservative" par excellence. This is the aforementioned emphatic recourse to spiritual-moral values as an antidote to the amoral effect of scientism, utilitarianism, and economism or

eudamionism, which ideologically determine the life of mass society and are supposed to lead to the formation of an "immature" human type within invisible administrative apparatuses. In contrast to the incommensurable, yet senseless and ultimately dangerous change of this society, which is on a breathtaking chase of

progress and forges its own chains in the process, values mean firm points of orientation and reliable reference, they are the expression and confirmation of an

objective permanent order. This view seems to have much in common with historical conservatism. common with historical conservatism. In reality, however, it only takes phrases or catchwords, without any regard for their original concrete historical reference, which is either (in most cases) simply unknown or discreetly left aside or reinterpreted. This ignorance or modernization of the (conservative) past is, of course, symptomatic. For no matter how much today's "conservatives" may resent the modern mass society and the

-However much they long in reflective hours for the 19th, 18th, or even the 13th century (tacitly assuming, of course, that they belong by right to the ruling upper class of those times), they must finally accept the 20th century as their own and see<sup>25</sup> in parliamentary democracy the "only real alternative" to totalitarianism. Moreover, a real identification with historical conservatism is hindered by the fear that one would thereby declare oneself in solidarity with its enemies, which, of course, could only be a disadvantage in political polemics, especially since the left-wing enemies of the contemporary "conservatives" reproach<sup>1800</sup> them precisely for their direct origin in the black counter-revolutionary camp of the years around 6<sup>2</sup>.

<sup>25</sup> We carry here the forced confession of a "conservative" like Rossiter, Conserv, 17.

<sup>26</sup> From a Marxist-Leninist perspective, Elm contends that conservatism has no unique class-allied bond, like socialism or liberalism, but has been successively the ideology of feudal-aristocratic, riotous national-liberal, and imperialist forces; its continuity as a political ideology is based on the discontinuity of its social base. Elm does not explain how this thesis is compatible with the Marxist conception of the

Such "conservatives" are forced to refer to liberal aspects of historical conservatism or to fake them, or to treat the tradition of historical conservatism selectively and to distance themselves explicitly from<sup>27</sup> its "reactionary" fliigel. It is precisely in this non-commitment that the relationship of modern "conservatives" to historical conservatism proves to be artificial and fictitious.

For the neo-liberal "conservatives" it is indeed impossible to extract from historical conservatism anything other than platitudes, to which a specific content, somehow related to the present, has to be given only in retrospect. For the original content of the conservative catchwords was directed against the very content with which they are filled today - from the market economy to human rights. If this is so, then the question arises to what extent the great principles that are supposed to be summarized in these keywords (order, hierarchy, tradition, religion, etc.) can be considered valid in themselves, that is, independent of their content and their failure in the past. By the blo13e fact of its assertion, liberalism has proved very vividly that<sup>3</sup> what the conservatives considered to be unnatural par excellence in the light of the application of their great principles and catchwords was functional after all. What can guarantee today that these latter will not change again? In any case, general principles and concrete historical application of them must be separated from each other, so that one can refer to the former in the time of spiritual and political need. Even with regard to the Christian religion, where one would most likely assume a stability of views, the shift of emphasis is unmistakable and drastic. To historical conservatism, Christianity appeared primarily in the form of a social hierarchy that sanctioned or embodied, and the anarchic individualism of the social classes that was the main reason.

What obviously interests him is the substantiation of the well-known thesis of the historical genealogy of National Socialism, from which, according to Elm, conservatism does not differ in ideological content, but only in the question of the use of terror (Traditionen, esp. 13, 15). Similarly, Grebing argues that conservatism and capitalism have been intertwined since Marwitz and Gentz, so that the prevailing bourgeois liberalism of today can only be conservative or reactionary (Aktuelle Theorien, esp. 23ff, 32; Konservativ, esp. 35, 38, 45, 47). Grebing's thesis is nothing more than a projection of the aforementioned leftist interpretation of the National Socialist phenomenon into the distant past; the author's historical education, by the way, leaves much to be desired.

<sup>27</sup> Even Kaltenbrunner, who has been the most outspoken regarding the identification with historical conservatism, tries to prove the mixing of liberal and conservative already in Chateaubriand, the originator of the term, and furthermore he claims a difference in essence between conservatism and reaction.

Bad" conservatives, for example, were Haller and A. Miiller, while "good" ones were Baader, Gentz, Ranke, and (significantly) Tocqueville (Der schwierige Konserv., 28).26,

duality disciplining church, the Christianity of the neo-liberal "conservatives" remains individualistic and personalistic, it forms the inner faith and support of the subject deciding, acting and existing on his own responsibility within a free market economy. Here, the turn to the higher sphere of religious values introduces and consolidates the turning away from the materialistic-economistic thinking and behavior of the consuming mass society, so that massification and the welfare state can be hit in their ideological foundations; A personhood with such spiritual needs can neither be massacred nor alienated, and furthermore, its inner detachment from the superficial sense of entitlement of the habitual consumer brings with it<sup>28</sup> the dutiful performance of service and a positive basic relationship to the existing institutions. If these ideal prerequisites are present in their entirety, then the one who sees himself as a conservative from his Christianity can just as well call himself a liberal, since the Christian attitude is by its nature liberal and personal, while conservatism as such has often made common cause with reaction and authoritarianism; neoconservatism and neoliberalism merge thanks to the effect of a Christianity understood in this way, which is an overcoming of the rationalistic-relativistic as well as economistic aspects.

of liberalism makes possible<sup>2-9</sup> The spectre of collectivism is a threat to

personalistic Christianity and a liberalism well inoculated with Christian, "conservative" thought and therefore mal3ed together<sup>30</sup>. It is precisely this verbiage, i.e. personalization and individualization of Christianity, which stands in contrast to historical conservatism, that makes the neo-liberal attempts to exploit the "Christian tradition of the West" for their own socio-political purposes meet with no Catholic opposition.<sup>31</sup> But there are also "conservatives" who, in view of the possibilities of interpreting Christian teachings in an egalitarian-revolutionary sense or because they want to keep their approach free of "ideology," are opposed to<sup>32</sup> a fundamental linking of their sociopolitical ideas to religious thought. The secondary, but nevertheless existing opposition of

<sup>28</sup> Typical statements in Gerstenmaier, Was heillt heute kons.?, 29. See also Clarke, Cons. Faith, (8 Cf. Friedrich, Neo-Lib. ., 514.

<sup>29</sup> This is the position of Kuehnelt-Leddihn, Neokons. u. Neolib. , esp. ff, f123131(

<sup>30</sup> S. Schoningh, What heals today cons...? 33.

<sup>31</sup> See the comprehensive book by Nawroth, who not without reason defines neoliberalism as a new version of the "nominalist philosophy of enlightenment" and "liberal individualism" or simply as a renaissance of "old liberal ideas" (Sozial- u. Wirt schaftphil. d. Neolib., 425).

<sup>32</sup> Thus Kaltenbrunner, The Conservative . . . Topitsch, too, points to the possibility of a revolutionary interpretation of Christianity and natural law and reminds us of the structural similarity of such thought patterns with the Marxist doctrines of salvation (Aufgekl. u. unaufgekl. Kons., 12). However, when he demands that "the insights of modern scientific knowledge" be "applied", he does not mean that they should be "applied".

Christian and non-Christian "conservatives" once again brings to light the vividly precarious character of the thought patterns that appear as "conservative" today.

The rick recollection of "traditional Christian values" goes hand in hand with the This is accompanied by our "conservatives" riposte to another keyword of historical conservatism, namely that of the social hierarchy, which is ultimately based on the natural inequality of human beings. The connection results both from the assumed tendency of the Christian to respect established orders as God-given and from the conviction that Christian inwardness can be satisfied with any position in the social hierarchy, while the extroverted "shallow" non-Christian, who is rootless, is the type of the rickless upward striving as well as the habitual consumer. This extroverted human type is thus the physical motor of the all-embracing mobility in the mass society, from which the tendency to leveling of persons and values is derived. In this sense, the neoliberal "conservatives" resort to Christian or other "higher spiritual values" is related to their struggle against the egalitarianism of mass society and their elitism, which has already been noted by many observers<sup>33</sup>. This is often linked to the thesis of the natural inequality of the people.

people<sup>34</sup> (from their highly ambivalent, their "conservative", their "social" and their "political").

We will speak about the implications of this in a moment) and usually takes the sublimated form of the theory of the unbriable opposition between freedom and equality. In the attempt to work out this opposition on the basis of onto logical categories, our Christian "conservatives" show themselves rather nervous about the natural law-egalitarian interrelations of Christian anthropology and the doctrine of the image of God; The equal moral value of all persons is recognized in principle, but it can only constitute an ethical right and not a political or economic demand.<sup>35</sup> More direct formulations make clear that it is not freedom in abstracto that conservatives want, but the kind of freedom that would make existing inequalities more acceptable.

If he tries to "make the ideological illusionary component fruitful for a basic attitude" which could be called enlightened conservatism (13), then on the one hand he misses the importance of the ideological illusionary component for practical action (an importance which he himself has already worked out in other contexts with regard to his political enemies), and on the other hand he unintentionally proceeds in the same way as the natural lawyers or the Christians: he wants to derive a solien (a normative attitude) from a being (this time scientifically proven), and in doing so he cannot see that anyone who establishes and defends norms must, from the structure of thought, come close to ideological thinking.

<sup>33</sup> E.g., by Friedrich (Neo - Lib., 518) and O'Sullivan (Cons., 115).

<sup>34</sup> See, for example, Rossiter, Conserv. , (25

<sup>35</sup> Thus Feiling, Principles, 135.

or restore those that have been eliminated<sup>36</sup>. Even the most emphatic defense of inequality on the part of contemporary "conservatives", however, is not capable of eliminating the fundamental substantive difference between their conception and that of historical conservatism. They may or may not want to, they stand on the ground of the Hingst victorious liberal revolution and therefore (just as it was done in the 18th century in the fight against the hereditary privileges of the nobility) have to justify the inequality by reference to higher talent or better performance and not, for example, on the basis of the biological affinity to a certain group of people or by reference to the long history and the heroic deeds of the ancestors. Social inequality based on different talent or performance can (also) be seen as a function of the natural inequality of human beings, but there is a decisive difference between this form of inequality and the hereditary one that historical conservatism used to assert: inequality based on talent and performance is not necessarily tied to the domination of a particular social group, i.e., it can be deduced from a general statement about the natural inequality of human beings. That is, no permanent legitimization of domination can be derived from a general statement about the natural inequality of human talent and achievement, if only because the superiority of talent and achievement arises and passes with a particular finite subject. If, moreover, it is taken into account that there is no such thing as "the" endowment, but that several kinds of endowment are known and conceivable, each of which can legitimize or at least preserve domination, then it *must be* obvious that precisely because of the natural inequality of human beings it is precisely the enemies of our "conservatives" who have been able to gain and retain the upper hand. If it is measured exclusively by talent and performance, inequality does not logically or practically guarantee the rosy future of animals, which, to remind us of Orwell, are at the moment more equal or more unequal than the others. Nevertheless, the "conservatives" in the present constellation must cling to the inequality thesis for polemical reasons - as long as their enemy extols and holds out the prospect of undiluted equality.

The example of the thesis of inequality illustrates that, in their riposte to cues of historical conservatism, contemporary "conservatives" not only tacitly or unconsciously substitute old content for new content, but also entangle themselves in contradictions or make logical leaps. Some of the most important of these will be discussed in brief below, in order to illustrate more clearly the reasons which make a clear definition of today's "conservatism", which would prove it to be an organically evolved successor of the historical one, impossible. Also, the nominally identical invocation of tradition as a legitimizing, authoritative force on both sides

The fact that conservatism is a "founding instance" cannot establish a necessary historical or intellectual-historical connection between conservatism and "conservatism. There are two reasons for this. First, because of the inherent ambiguity and manipulability of the concept of tradition, as discussed in the previous section, today's "conservatives" understand it differently than, for example, the counter-revolutionaries of the time around 1800, especially since, as I said, they generally do not want to identify with the old concepts of "reaction" at all; Thus, they construct an "occidental tradition" that has always contained bourgeois values and freedoms, or at least aimed at them, whereas for the conservative pioneers of the *societas civilis*, censorship and the burning of books, for example, were a perfectly normal process in the civilized world. For example, censorship and the burning of books was a perfectly normal process within the framework of this same tradition. Secondly, however, because the "conservatives" must speak of tradition and related authority in conditions in which traditional legitimacy and rule have neither institutional nor (sufficient) psychological *stutzen*, quite the contrary. It is difficult to see how tradition could provide the necessary authority within modern economic and administrative units, where only the traditional authority - *iibrigens von den* The "conservatives" themselves have been praised for their higher talents and efficiency. No less problematic is the exploitation of tradition on the political level of contemporary parliamentarism, where even traditional values are elevated to maxims of action only by the power of the ballot, while their political representatives and supporters, by talking about them, speculate<sup>37</sup> on the little man with his ballot, who is afraid of the fluctuations and uncertainties of a radical democracy. Conservatives", who are equally committed to tradition and modern parliamentarism, must fail to see that in the blessed days of traditional rule the very legitimization of rule by equal, secret and universal suffrage was unthinkable, that rulers derived their authority not least from the fact that they did not need legitimization by such a vote as a manifestation of the will of the "indifferent citizen". Is the 1st bearer of traditionally legitimated authority the one who goes in search of votes in the name of the same, or the one who elects him after having seen him on television? But how can an election, which could and should have turned out differently, legitimize tradition, which can be nothing other than what it is?

In order to stop the egoistic individualism and the anarchic rootlessness of the members of the mass society, which drives forward egalitarianism, the "conservatives" want to use not only Christianity, tradition and authority, but also supra-individual structures (family, professional organizations, associations, local self-government), which give the individual natural birth and a sense of security.

<sup>36</sup> Thus Cowling, *Present Position*, C19.

<sup>37</sup>. the remarks of Landshut, *Restoration*, 50.

The state and the nation continue to exist as overlapping units for settling disputes and keeping unilateral interests in check, but they now arise from the "organic" combination of the aforementioned entities.<sup>38</sup> On paper, the design of this golden mean between the unbridled individualism of individuals and the unbridled despotism of the state looks convincing, <But it is still to be asked to what extent such a state can survive in the economic, military, and foreign-political competition with others who are capable of a greater, more disciplined, and more purposeful concentration of their forces even at the price of "freedom," and also to what extent it can survive a defeat in this competition and to what extent it can be tackled at all in view of the fear of such a defeat. Conversely, it can be noted that these and similar supra-individual entities could very well constitute intermediate levels of a totalitarian pyramid, the base of which was the sum of formally legally autonomous individuals and the top of which was the ruling elite. Historical experience with "totalitarian" states, which is not always identical with the novelistic world of negative utopias, shows that they hardly ever consider the individual as such and in his isolation, but prefer <These latter, then, are by no means quasi-automatic guarantors of "freedom," but their function is determined by the general character of the community that encompasses them. Something else, however, interests us here above all. When historical conservatism set up the various "organically grown" human communities against the regimentation of social life by the birocratic modern state, it wanted to strike not only at the latter, but just as much at ideas and principles which claimed validity beyond the limits of the "organic groups" in which they arose and whose specific needs they expressed. Such ideas were above all the so-called human rights, whose universal claim the conservatives of the 18th and 19th centuries rejected with reference to the rootedness of law and rights in the respective historically shaped human community. Now the contemporary "conservatives", at least in their large majority, want to maintain liberal universalism with respect to human rights and the like, as is required by the polemic against "totalitarianism", as well as to activate social entities whose view of the world as well as their activities *must be* particularistic. In fact, to the extent that this particularism is turned against the grip of the modern state, the

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<sup>38</sup> Clarke, Cons. Faith, 14ff, and especially Nisbet, Quest, chs. 9-11.

This is because the historically decisive role of the state in the enforcement and choice of universal rights and rules of the game is completely lost from view. This ancestral social particularism is, moreover, accompanied by intellectual particularism, namely by the stereotypical conservative "anti-theoretical" preference for the "empirically given" over all "abstractions. The role of abstraction in the formation of the concept of human rights is overlooked, as is the corresponding role of the modern state. The simultaneous defense of the historically grown and particular against abstractions and of human rights against "totalitarianism" forms a contradictio in se, since the concept of human rights would never have come into being without abstraction from history, i.e. from the concrete rights and duties of people within certain groups, and without the corresponding subordination of the latter to the uniform rules of a uniformly administered state. In this the representatives of historical conservatism were right. The contemporary But "conservatives," if they are to be true to their "organic" particularism to its logical end, must break with liberal universalism in all its forms, just as they would have to advocate the abolition of universal, equal, and secret suffrage if they were to serve the idea of traditionally sanctioned autocracy with all seriousness and consistency. In their rage against egalitarian mass democracy and the birocratic welfare state, some of them were undoubtedly prepared to go so far. And if this generally remains only a sparse suggestion, the reason is again a polemical one: human rights and modern parliamentarianism must at all times be available, as intact as possible, as weapons in the higher struggle against "totalitarianism.

The conflict between the liberal core and the "conservative" philosophy in the social philosophy of our "conservatives" also breaks out when the last logical and practical consequence of economic individualism, i.e. the all-consuming and therefore permissive mass society, is rejected,

<The "conservatives" are aware of the fact that consistent individualism in its combination with economic rationality (i.e. utilitarianism) pities tradition and authority. The "conservatives" are aware of the fact that consistent individualism in its connection with economic rationality (i.e. as utilitarianism) must mercilessly destroy traditions and authority and finally subordinate everything to the eudamonistic calculus<sup>39</sup>. They also know or suspect that the rejection of permissive society and the endorsement of economic individualism are<sup>40</sup> often difficult to reconcile, at least in political practice. Nevertheless, they have not yet been able to develop an effective strategy for eliminating this contradiction, which is often lame in sociopolitical terms.

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<sup>39</sup> Rather than many Casey, Tradition.

<sup>40</sup> On the Tories' dilemma in this regard, see Gamble, Cons. Nation, 112f



were practically limited to moral appeals and invocations, which, if

If they are not backed up by an emergency situation, they will largely fall by the wayside. Their success would mean, moreover, that the great mass of people, because of

If the "conservatives" acted with a "spiritual" and "moral" (in the "conservative" sense) motivation, which cannot be the case, how would the situation lamented by the "conservatives" themselves have come about? Even if the "conservatives" wholeheartedly abhor the vulgar eudaimonistic mass consumption and the leveling of people and values caused by it, they can neither forbid the entrepreneur to produce on the basis of pure profit speculation - speculation with the "lower instincts" - nor prevent the consumer from consuming what is produced in this way. Moreover, they cannot and must not prevent the extension of this kind of production and consumption to everything imaginable; even the "spiritual values" that the "conservatives" themselves offer and propagate are affected by this and function more as cultural goods to be consumed than as undisputed, objective normative instances. In this sense, the spiritual and moral relativism of the egalitarian mass society is related to the generalization, i.e. the quantitative and qualitative intensification of consumption. But if the values become consumption giants, then also unvalues can be consumed, at least to a limited extent; permissiveness spreads or sets the tone, and the strict mores loosen, if they do not even dissolve. However, custom is not only something moral, but also something permanent, and therefore the dissolution of custom affects not only morality in the narrow sense, but also tradition in the broadest sense. Conservatives" who today advocate<sup>41</sup> tradition and custom do not even ask themselves what to do if fashion takes the place of custom, i.e. if the unacceptable renewal on all levels of life becomes custom; nor can they refute the statement that such renewal is demanded by the existing nature of the economic mechanism or by the principle of economic individualism. Therefore, their attitude toward renewal and fashionable change must remain as ambivalent as toward efficiency. In the hours of the great (semi-)aesthetic reflection on the social, efficiency, especially when it is combined with such demands as centralization or nationalization, appears as a suspicious by-product of the narrow utilitarian spirit<sup>42</sup>, whereas in most, if not all, cases where economic questions are decided in practice, it is the supreme imperative.

<sup>41</sup> See, e.g., Merkatz, Cons. Function, 71.

<sup>42</sup> See, e.g., Clarke, Cons. Faith, 23.

is<sup>4.3</sup> It is significant that even the neo-liberal, "conservative" criticism of the

The argumentation of the expansion of the birocratic welfare state, etc., is often based on the criterion of efficiency, so that it can be understood by the average manager in business and politics as well as by a broader public. Cultural critical profundity is reserved for the rather narrow intellectual circle of the gourmets of "conservatism.

However, the high price paid for efficiency is not only a practical necessity, but also - in an age that thinks not least in terms of economics - a powerful argument in the ideological and propagandistic struggle against the birocratic" and "heavy-handed," in short, "inefficient „totalitarianism. It is only by considering the tactical and strategic needs of this struggle that one can understand some of the "conservative" ambivalence with regard to the points just mentioned. The dilemma of the contemporary "conservatives" can be formulated as follows: they have to avert the "tyranny of the majority", but at the same time they have to ward off the tyranny of a totalitarian minority - in alliance with that majority whose legal tyranny they fear. The struggle against the second and apparently much worse enemy makes concessions to the first inevitable. Thus, the already mentioned difficulties of the „conservatives" with the mass-consuming mass society grow in the face of the fact that abundant consumption is, in the eyes of very many "middle-class citizens," the main legitimization of the "free world" against "totalitarianism," which is described with particular fondness as the regime of long queues and extremely limited choice of shoes and clothes. It was in the competition with "totalitarianism," especially after World War II, that "conservatives" moved closer to Bentham's radical liberal principle of "the greatest happiness of the greatest number" and encouraged the consumerism they are skeptical of today; For a few decades, however, the increase in material prosperity within the framework of continuous growth, which would offer more and more people ever greater professional and social opportunities, was regarded as an undisputed ideal<sup>44</sup>. But the idea and practice of the welfare state also took shape in an attempt to silence the "totalitarian" critics of the capitalist economy and society. The expansion of the welfare state was so important politically that it had to be undertaken, even if, as many "conservatives" knew from the beginning, it would entail a permanent conflict, since the welfare state could be expanded by raising

<sup>43</sup> On p. 181 of the Conservative Party anthology, from which Clarke's rather dim view of efficiency, just quoted, was taken, there is the incomprehensible sentence: "Britain's need today is the full use of her productive resources in the most efficient way.

<sup>44</sup> On these tendencies in the British Conservative Party, for example, see G. Ambler, Cons. Nation, ff.57 ff.74

taxes, while the demand for private initiative required<sup>45</sup> tax cuts. This and similar practices, as well as the constant consideration of the needs of the ideological struggle with the

As a result, "conservatives," especially in the postwar period, placed special emphasis on the assurance that conservatism was characterized by openness, receptiveness, and a "truly" progressive attitude. But if progress is fundamentally affirmed under the pressure of the zeitgeist and for the sake of self-assertion in the ideological struggle, then the question must arise in everyday life: What is to be changed?", whereby conservatism is forced into a permanent defensive position. Even the demand for "continuity of economic development" <sup>46</sup> does not help at all, since large-scale, high-tech industry itself changes the meaning of "continuity" and "organic growth. In fact, it is precisely the economic gigantism that the

The problem is that the measures to fight "conservatives" are the result of a quasi-automatic continuous movement, while the measures, on the other hand, are of a voluntaristic and dirigiste character. In concrete terms, the problem is: *what* soil grows "organically"? If a society is already on the way to bureaucratization, then "organic growth" can only mean further bureaucratization. The "conservatives," like all ideological thinkers, of course endow their own basic concepts with a normative dimension: By definition, "organic growth" can only be that which leads to their goals. Thus, even a dismantling of the welfare state from above or an enforced limitation of consumption could be called truly organic growth. What the "conservatives" fail to realize, however, is that the huge redistribution problems that such a dismantling would create could only be solved by more administration and even more efficient rationality, not by tradition and custom. Less welfare state and consumption does not necessarily mean - under today's circumstances - less state.

This brings us to the last of the great ambivalences of the "conservatives," namely that toward the state. Contrary to their programmatic rejection of the expansion of the state and its bureaucracy, the "conservatives" find themselves forced either to tolerate it for domestic-social or electoral-tactical reasons, or to actively demand it: this has been the case, as I said, with **the** welfare state, which was supposed to take the wind out of the sails of the anti-capitalist propagandists. The expansion of the state very often takes place under the pressure of extra-political and militaristic factors, but we will dispense with these here in order to concentrate on the social aspect of the problem in **the** narrower sense, which is admittedly affected by it. In principle, it must be said that the "conservative", perhaps unintentional and

<sup>45</sup> On this conflict, see, for example, Epstein, *Pol. of Brit. Conserv.*, 37.

<sup>46</sup> Thus Repke, *Gesellschaftskrisis*, 41.

The modern state was developed with the intention to compensate the lack and weaknesses of the person who should be the natural social bearer of "conservatism" and who, in the desired but now unattainable ideal case, should not need any external, i.e. state-directed, help to maintain his social position. We are talking here about the bourgeoisie and the drastic change of its social position after the formation of the welfare state of the 20th century. After the formation of this state, the bourgeoisie becomes one of the social groups that thrive or simply live at its permanent or temporary mercy. This important historical and typological change is not readily perceived because the bourgeoisie remains capable of influencing the decisions of the modern state in its own favor. However, every change in political leadership and every reorientation of (followed) economic policy makes it clear that the bourgeoisie today is affected by the day-to-day decisions of the state to a previously unknown extent - like all other social groups. If we say that the bourgeoisie is not the sole master of the modern state, but lives only under its umbrella and protection (although, as I have said, under certain circumstances it has more or even much more state umbrella and protection than its competitors), then we must be aware of the fact that the bourgeoisie is not the sole master of the modern state, but lives only under its umbrella and protection. more state umbrella and protection than its competitors), this does not imply that once in the past, perhaps with a few exceptions in the 19th century, there was that simple and unproblematic identity of bourgeoisie and the state, as described by a famous phrase of

Communist Manifesto" is suggested. In countries such as Great Britain or Germany, the bourgeoisie of the nineteenth century had to share the rule of the state in different proportions with the aristocracy, which insisted on maintaining the supremacy of the *societas civilis*, and therefore (in parallel with the defense of *laissez-faire* and precisely for the sake of its implementation) had to support the development of the modern state, now freed from the aforementioned supremacies, as a guarantor of uniform legislation and administration, i.e. uniform rules for the economy and society. The state's role is to support the development of uniform legislation and administration, i.e. uniform rules of the game for the economy and society. Today, on the other hand, it shares (again in different proportions) that rule with social groups and strata which stand not above but below it in the social pyramid and see in the expansion of the state or in its entrustment with social functions and duties the only firm guarantee for the demand of their own interests. Of course, its general character depends on the decision as to whether the modern state will be decisively influenced by that social group which gets along with "little state" or by that which insists on its expansion in the social direction. Either way, however, it must remain the overarching and superior authority, initially in the sense that it does not as a rule surrender itself completely and finally to the influence of one side, but remains to some extent open to influence from all sides and moves accordingly in one direction or the other. Under these circumstances, the bourgeoisie, since it has not completely rejected the influence of the other side and

The state, therefore, cannot determine the character of the state completely and at will, adapt it to the reality of this state and harness to its own socio-political purposes the interventionist and dirigiste activity which has now become an irrevocable fact, while, on the other hand, it must prevent the extension of this activity beyond that limit beyond which there is no longer any room for a bi.irger economy and way of life. M. a. W.: since bourgeoisie does not rule alone and at will, it must seek the help of the state as compensation for this; and since those with whom it must co-rule have in the meantime added non-bi.irger aspects to the state, it must, if it seeks state help on its own account, employ int erventionist -dirigi stic, i.e. non-bi.irger means for bi.irger purposes.

The contemporary "conservative" attitude toward the modern state is shaped by the tension between the dilemma of depriving a state that is no longer (entirely) bi.irgerlich and fighting this state because it can no longer be bi.irgerlich. It reflects, first of all, the fact that the bourgeoisie not only does not rule alone, but has lost the confidence of the ruler and lives at the mercy of the state, especially its economic and financial policy. This loss of confidence, which at the same time means a loss of vitality, is noticeable, for example, in the fact that bourgeoisie and its The "conservative" political representation is rewarded<sup>47</sup> with mixed private-state forms of ownership in industry or with the idea and the fact of state control, if this promises and permits an untroubled existence in a greenhouse. Thus, people are satisfied with rather short-term arrangements if these initially make survival possible or even guarantee good profits in advance, even if this reduces the specific weight of the "conservative" forces in state and society in the long term, even if imperceptibly. These partly clever, partly angular, and partly self-murdering unassuming practical arrangements of the bi.irgertum give the „conservative" view of the state and its functions the appearance of a colorful spectrum in which all possible evaluations, positions, and variants are represented. Alongside advocates of a strong government economic policy, who are openly averse to laissez-faire, there are<sup>48</sup> those who basically accept regulatory intervention by the state and reject its transformation into a welfare state, altho,ugh they do grant<sup>49</sup> it limited social conditions, as well as others who are reminiscent of the free traders of the century19.; in this respect, the general invocation of the "free market" and the "free market" are the most important factors. conservative" topoi, from the Christian to the economic, to partly explain the inner ambiguity of "conservatism" in this question as well.

<sup>47</sup> On the phenomenon in Great Britain, see Epstein, Pol. of Brit. Conserv., 37f.

<sup>48</sup> See, e.g., Butler, Industrial Charter, f46., 48.

<sup>49</sup> See, e.g., Clarke, Cons. Faith, ff, 2234.

and, in part, to preserve it<sup>50</sup>. Conservative" theorists, anxious for equality and synthesis and wanting to have two irons in the fire, are wont to point out that both the rejection of unrestrained liberal Indi vidualism and the associated positive evaluation of the role of the polity and the state, and the confinement of this role by laws, rights and values designed to protect the human person and freedom, are equally and equally part of the "conservative" tradition<sup>51</sup>. Especially ideological representatives of the Conservative Party, who proudly look back on its long history and all too often confuse the continuity of the name with the continuity of the cause, justify this view.

<By the historical argument that in the 19th century conservatives had fought liberalism in the name of the state and authority, just as in the 20th century they fought socialism in the name of the freedom of the individual, when today they advocate the overcoming of laissez-faire and the expansion of the welfare state in freedom, they are merely linking up with the honorable tradition of Disraeli.<sup>2</sup>The legend of the pro-worker attitude and policy of Disraeli, which some of today's "conservatives" particularly cherish and cultivate for understandable reasons, will occupy<sup>53</sup> us in another context.<sup>5</sup> But the thesis of the deeper continuity and uniformity of conservative politics, despite all the changes in the polemical goal, must also be vigorously disputed. When the conservatives of the century19. fought liberal individualism and laissez-faire, they did so in the interests of landed property, which, on the assumption that the principle of property as such would remain intact, urged the state to take "pro-worker" measures to lower as far as possible the rate of profit of industrial capital and thus its economic and social attractiveness, which meant for landed property a lack of capital and a loss of prestige. In the 20. In the twentieth century, when the "conservatives" have joined forces with industrial capital, they must place the state at the service of the latter and shape their social policy accordingly, this time as a weapon of defense against the totalitarian enemy and no longer as an obstacle in the way of industrial bi.irgertum. The character and objectives of the two paternalisms and conceptions of the state are thus essentially different from one another; they do not constitute a social and historical continuum, but rather the two members of an antithesis.

The ambivalence and vagueness of the neo-liberal or old-liberal "conservatism" figure of thought can be observed even more drastically in its American version,

<sup>50</sup> Cf. the remarks of Greenleaf, Mod. Brit. Conserv. , 207(, 194(

<sup>51</sup>See, for example, Feiling, Principles, 133.

<sup>52</sup> Thus Lord Hailsham, Cons. Case, 57ff, 66 f., as well as Clarke, Cons. Faith, 7; cf. Epstein, Pol. of Brit. Cons., 30ff.

<sup>53</sup> S. Chap. IV, Sect. 2.

This is not only because the characteristic features of a face appear more vividly in a caricature, but also because the specifically American use of language terminologically anticipated the appearance of European "conservatism," just as the latter provided arguments and thought materials for the American comrades-in-arms in the postwar period; a parallel study of both phenomena can therefore provide insights into both. By calling themselves "conservatives" in order to defend themselves against the "conservative" approach, the European neo

In order to distinguish "liberalism" from "progressive" dirigiste statism, they adopt the American terminology, in which "liberalism" is traditionally associated with a distrust of laissez-faire and, conversely, with a positive assessment of "progressive" state intervention in the economy and society. American "conservatives" therefore have no identity problems to deal with when they call themselves that and when they denounce the statism, collectivism and leveling tendencies of the domestic "liberals"; they have grown up with this terminology and are at home in it<sup>54</sup>. As far as the content of their sociopolitical thinking is concerned, they follow in all essential points the basic scheme of European old- or neoliberal "conservatism," which they perhaps enrich with local nuances, but on the other hand (especially with regard to the intellectual-historical retrospectives and references) present in a considerably more naïve and dilettantish manner. Like the European "conservatives," the American "conservatives" want to protect private property, free enterprise, and parliamentarism from the wild excesses of liberalism, i.e., from the dirigiste welfare state.

<sup>54</sup> Thus, Viereck contrasts conservatives and liberals when he sees in the latter progressives or even a kind of fellow travelers of the communists; but he identifies them when he refers to European old liberals who had been aware of the opposition of freedom and equality (Cons. Revisited, (18,130 ). Also for Kirk

For the old ones of classical European liberalism (parliamentarism, human rights, etc.), he uses the term "democracy" (obviously as an opposite term to "totalitarianism"), namely "old-style libertarian democracy," which hardly differs from true conservatism (Cons. Mind, 413; not coincidentally, Kirk devotes an entire chapter of his book to the Victorian critics of mass democracy known to us, see p. 265ff and cf. above notes 15 and 18). Rossiter also bases his comparison of conservatism and liberalism on the American meaning of "„liberal," although he registers some similarities between the former and the "sensible liberal" (Cons. , 55 ff ). There are American "conse rvatives" who are aware of the contrast between their own and European usage (at least that which prevailed until a few years ago) and therefore know that their political commitment is equivalent to a commitment to European "classical liberalism" of the 19th century. In its commitment to individual liberty and its corollary commitment to an economic system free of state control," since in American "liberalism" means as much as "democratic socialism" (Meyer, Cons., 3 f.).

The author is not interested in the "socialism" of the state<sup>55</sup> on the one hand, and the "eudamonistic individualism" of the state on the other hand, together with its socio-spiritual preconditions and concomitants. The importance of spiritual values is emphasized particularly strongly here, both against the vulgar materialism of consumption and against the "collectivistic materialism [sic] of Marx and other socialists," since "planned society" and "the sterile mass-mind" or the "miserable collectivism" which impoverishes the social-spiritual society of the world,miserable collectivism which impoverishes both soul and body [sic]" are seen<sup>56</sup> as complementary aspects of one and the same historical phenomenon- economism and the rule of the impersonal mass-man are to be replaced by Christian idealism and personalism (more concretely: <sup>57</sup>The "conservatives" sought to "preserve the essence of man in the traditional sense and with its orientation to the God-ordained purpose of existence "58. This is the peak of a scale of thoughts or hierarchy of values and goals, which coincides<sup>59</sup> with the whole spectrum of leitmotifs of European old- or neo-liberal "conservatism".

In view of this identity with regard to the selection and hierarchization of thought materials as well as to the basic intention, it is not surprising that the American "conservatives" must remain stuck in the same basic contradiction as their European counterparts. They reject the ultimate social and cultural consequences of a system whose economic and political axes they endorse, or they are unwilling or unable to come to terms with. they do not want to or cannot come to terms with the fact that - formulated in Hegelian terms - the basic order preferred by them must produce its own negation out of its own shock, and they are anxious to offer up old ideas and older, partly fear-dead attitudes to life as a counterweight against the latest development in the direction of a consuming mass democracy. If, however, on (Western) European soil this basic contradiction is sometimes concealed or rather glossed over by the fact that the aforementioned ideas have deep native roots and, in the worst case, need only be revived (even on paper), not invented or imported, in the U.S.A. the great sore point of contemporary "conservatism" appears openly because here national tradition provides hardly any ideological or social points of reference for the construction of a "conservative" society.

This is precisely what makes the precarious situation of "conservatism" as a whole apparent (especially since the use of old liberalism in Europe is also increasing).

<sup>55</sup> Goldwater even considers "Welfarism" more dangerous than all nationalizations, since the latter, as he writes, is "much more compatible with the political processes of a democratic society" and therefore "more difficult to combat" (Conscience, 70ff. ).

<sup>56</sup> Kirk, Cons. Mind, 409;401,405, Cons. in Action, (206

<sup>57</sup> Viereck, Cons. Revisited, 22ff; Kirk, Cons. Mind, 422,432.

<sup>58</sup> Kirk, cons. in action, 205.

<sup>59</sup> V g l. Kirk's canon of conservative thought, Cons. Mind, (7

The American "conservatism" of all things provides us with the best insight into contemporary conservatism in its caricature-like nature. The appeal of the American "conservatives" fighting against the welfare state to aristocratic ideals of life, as well as their condemnation of indiscriminate individualism and economism, sounds most strange, even comical, in a nation that arose and grew up under the sign of pure liberalism (in the European sense) - if there ever was such a thing - and without having to fight for the victory of this liberalism against a native ancien regime. A real, i.e., standish and anti-liberal conservative attitude could not develop here out of agrarian life, which took place all too much on isolated farms run by individual farmers, than it could. Ity on isolated farms run by individual farmers to produce a sense of "community" and "tradition," nor from religious life, whose prevailing Protestant tendency favored an extreme individualism associated with strong activist moments; nor did old wealth exert a decisive influence on social life, so that the main goal of its owners, who had to protect themselves from the much more rapidly accumulating wealth, was to protect the people from the danger of the "socialist" tendency. the rapidly accumulating wealth of the nouveaux riches and the corporations, was to adapt to the mores dictated by the latter rather than to find their own way<sup>60</sup>. Finally, it was precisely individualism and economism that became traditions, which, under the later influence of mass consumption, developed in the eudamonic direction, thus at least partially incorporating their original puritanical features. Under these circumstances, a conscious socio-political tendency, which deserves the name "conservative" only if we mean by it the defense of the existing social and economic rules of the game, could only emerge as a partisanship for the threatened laissez-faire principle (and not as a rejection of it, as happened in Europe). The threat emerged on the American horizon in the last decades of the nineteenth century in the form of the idea of welfare, which partly replaced the<sup>61</sup> laissez-faire principle, which until then had been synonymous with political economy per se and often underpinned by social Darwinist arguments. It was precisely at this time that "conservative"-minded judges issued famous rulings that sought to<sup>62</sup> prevent the state from interfering in economic life, whether to curtail property rights or to regulate labor relations in the welfare state sense.

<sup>60</sup> See the good analyses by Auerbach, *Cons. Illusion*, esp. 69ff, 95; Crick, *Strange Quest*, esp. 373; Wilson, *Anatomy of Cons.*, esp. 353.

<sup>61</sup> On this development in the U.S.A., see Fine's fine book, *Laissez Faire and the General-Welfare State*, esp. ff167. (on Sumner and his Social Darwinism, see ff79.).

<sup>62</sup> See the texts of the judgments of Judges Field (1873), Blatchford (1890), and Peckham (1905) in Sigler (ed.), *Cons. Trad.*, ff.257-267ff, 289ff.

The memory of these facts should have made it understandable why the contemporary American "conservatives" went to Europe (and to the past) to find the "higher" ideas and values they needed, thereby setting themselves the highly unconservative task of inventing a tradition that would give bodily existence to their a priori fixed doctrines.<sup>63</sup>

The ghostly character of American conservatism, one might say, is evident from the fact, already emphasized by many observers,<sup>64</sup> that the ideals propagated by its representatives do not correspond in any way to the prevailing world of ideas of the American business class, which thinks in an economic and expediently rational way and, moreover, tends to set aside fundamental objections to big government, provided and as soon as the latter makes policy in its interests. Incidentally, the "conservatives" themselves make no secret of this discrepancy. Thus Kirk rebukes the intellectual shallowness of the businessman, who even bristles to smash traditional structures and ways of life by introducing mass consumption into underdeveloped countries<sup>65</sup>. Rossiter also openly admits that "the conservative mood still fits our industrialists rather ill"; even if the American capitalist harbors "conservative" private views of government, religion, family, etc., he nevertheless acts in a revolutionary way as a direct promoter of technological renewal and industrial growth, and consequently contributes decisively to<sup>66</sup> the emergence and spread of the materialistic and economic view of things, theoretical arrogance, and anti-intellectualism. Rossiter now expects a kind of inner conversion of businessmen, so that they could become the natural bearers of conservatism; to this end, they would have to detach themselves from economism, which is in fact an inverted Marxism, and, without abandoning the American practical and individualistic spirit, they would have to develop their own activity. subordinate to<sup>67</sup> certain values and a sense of community. The „conservative“ did not at any time question the predominance of profit as a motive, but on the other hand he wanted it to be understood as something intrinsic and to be kept<sup>68</sup> within "destructive", socially acceptable limits. Rossiter, of course, does not say who will set these limits in a binding way and what socio-political consequences such a setting would entail. Similar problems are also posed by his

<sup>63</sup> See the felicitous formulations of Crick, *Strange Quest*, 365, 373; cf. Wright Mills, *Cons. Modd*, esp. 211, 212, 216.

<sup>64</sup> O'Sullivan, *Cons.*, 148, Lewis, *Metaphysics*, 740 f. Lewis's essay also offers a sound critique of the "conservative" basic terms used by Kirk. On this point also Auerbach, *Cons. Illusion*, 133 ff.

<sup>65</sup> Kirk, *Cons. Mind*, 435ff.

<sup>66</sup> Rossiter, *Cons.*, ff220, 229, 231 et seq.

<sup>67</sup> A. a. ff.0., 244

<sup>68</sup> A. a. 0., 41.



On the one hand, individualism may have had a partially obstructive effect, since it prevented, among other things, the formulation and widespread acceptance of an American "conservative" theory<sup>69</sup>; on the other hand, however, it is vigorously defended against collectivism. Here, obviously, two different kinds of individualism are meant, but again it remains unclear who not only draws the theoretically plausible, but above all the practically binding boundaries between the two - and how. It is stylistically tacitly assumed that the desired balance could somehow be established with some good will on all sides. Rossiter's demands as a "conservative" therefore resemble an effort to square the circle. He wants to get away from materialism and economism, but on the other hand he thinks that "production at an ever rising pace" is necessary<sup>70</sup>; he advocates strong leadership and the creation of an aristocracy, but this must be in harmony with the ideals of American democracy; he rejects "the indecent anti-statism of laissez-faire conservatism", but at the same time he does not want to know anything about a strong government. Under these circumstances, it does not sound paradoxical when he declares toward the end of his book, albeit with some delay, that he only wanted to<sup>71</sup> pose the problems and not solve them.

These are, on the whole, the internal contradictions and ambivalences of contemporary "conservatism," which do not allow for a clear definition of it, so that there is no question of a scientifically acceptable continuity between it and historical conservatism, although, as we have seen, such a continuity must sometimes be asserted for polemical reasons. The impossibility of a substantive definition of contemporary

Conservatism", and indeed conservatism as *such*, becomes visible precisely in the banalities with which one tries to describe its essence. The most common of these is that conservatism is the view that the existing socio-political and economic order is the result of a historical development, but that it does not exclude<sup>72</sup> minor and cautious reforms and improvements. A way out of the banality is believed by those "conservatives".

<sup>69</sup> A. a. O., 221 (

<sup>70</sup> A. a., 0286.

<sup>71</sup> A. a. O., 277.

<sup>72</sup> For example, Wilson, *Theory of Cons.* (the author, however, begins with the statement: "The conservative of today hardly knows what to conserve," 29). Viereck (*Cons. Revisited*) also arrives at a banality after his long retrospective on Mettemich's allegedly exemplary conservative policy, which comprises almost two thirds of his book: one should change cautiously without upsetting the basis of the existing. Viereck would probably be disappointed to hear that it was precisely this principle or advice that the Soviet leadership, for example, had imposed on the Czechoslovak reformers as a 1968 condition for refraining from military action.

The "attitude of mind" and not a content bound to a certain party is characterized by the „realistic departure from the "concrete given," the aversion to abstractions, and the continuation of traditions in a meaningful way. Schoeps, whom we quote here, adds that the contents of the old ideological positions had today formalized themselves into attitudes and types of behavior that will run through all parties<sup>73</sup>. We have already stated<sup>74</sup> that terms like "concrete" or "tradition" do not prove anything, nor do they indicate anything, as long as they are not explained by specific statements of content. The first and elementary logical duty of someone who **wants to** start from the concrete is to define what the concrete means in concrete terms; for in and without this definition the vocabulary "concrete" is just as much mere flatus vocis as the vocabulary "tradition".

abstract", and the appeal to the concrete in general remains as abstract as abstraction itself. In order to define the concrete in concrete terms, however, the reference to specific contents is unavoidable and indispensable. It is therefore a contradiction in se to claim at the same time that conservatism proceeds from the concrete *and* that it represents a formal attitude, not a content. Whoever stands up for the concrete can only stand up for *this* concrete, thus binding his concrete-friendly attitude eo ipso to a content which he considers worth preserving. There can be no attitude that had not been formed and continued to be preserved as such in and through the defense of a certain content. If the conservative attitude is separated from everything and every content, then every time this attitude is brought to bear and made practically recognizable, the question of interpretation must arise, namely, it must first be clarified what the conservative attitude commands in the concrete case before it can be put into practice. It is more than doubtful whether conservatism (like any other political attitude) can survive politically for long if the question of interpretation, and thus the danger of division, follows it at every turn. The practical channeling of the conservative attitude, however, is - just like the "starting from the concrete"<sup>75</sup> - a question of interpretation, since the connection of this attitude with a certain content is indispensable, indeed constitutive for the attitude itself. If Schoeps does not want to acknowledge this, then

<sup>73</sup> *Cons. Renewal*, 19(7,

<sup>74</sup> See the section of 1. this chapter.

<sup>75</sup> Schoeps himself gives a good example of this when he remarks, with regard to the dispute between the (allegedly) conservative socialists around Wagener and the less socially minded conservative direction of Gerlach, that both sides had their good reasons (*Kons. Renewal*, 79 ()). The common conservative preference for the concrete obviously did not lead the way without further ado, because the concrete was interpreted differently in each case.

only because he considers the question of interpretation to be solved a *limine*, i.e. because the contents to which he ties his attitude are so self-evident to him that they appear to him as natural and inseparable components of the conservative attitude at all or as identical with it. In any case, they do not differ significantly from the contents that the other "conservatives" mentioned so far tend to think of spontaneously. Not only is his aversion to the welfare state, which lames personal initiative,<sup>67</sup> a sure indication of this, but the way in which he justifies his view that conservatism as an attitude runs through all parties is also very revealing. This view is illustrated by the historical example of West Germany, where conservatives, liberals and social democrats stood up for "legal security and freedom of the individual against totalitarian claims and ideologies" after the war<sup>77</sup>. The logical leap is striking: from the common commitment of three parties to *liberal content* or basic values, Schoeps concludes the existence of a *conservative attitude* in all three, which admittedly implies the identity of both in his eyes, especially since he seems to know no conservatives in the camp of the enemies of Western liberalism (inconsistently, if conservatism is merely an attitude). But beyond that, the question arises: what is the difference between a conservative and a social democrat, for example, if their difference in terms of being or not being conservative can be zero? If, on the other hand, as one *must* assume, the latter is less conservative than the former, how can one speak of a uniform and homogeneous conservative attitude in all parties? One can only do so if one means in reality not an attitude but a content, and if this content is the commonly affirmed basic liberal values. This is how Schoeps thinks, without knowing it.

Conservatives" who define their "conservatism" as an attitude or mood tend to describe it in the most intellectually sophisticated way possible, especially since these are often more or less<sup>78</sup> idealized self-portraits. It is clear from such descriptions, however, that the self-description "conservative" tends to be used not least by liberals, who display their political mildness or even equality with some coquetry; "conservatism" here would basically be an apolitical, cultivated existence within the framework of a community with rather weak government, stable rules of the game and freedom in the choice of one's own activities<sup>79</sup>. The turn to the apolitical offers

<sup>76</sup> A. a. f0.,80.

<sup>77</sup> A. a. O.,19.

<sup>78</sup> See, e.g., Rossiter's description of the "conservative mood," Cons., ff47

<sup>79</sup> Thus, for example, Oakeshott, who first describes the "conservative disposition" („to prefer the familiar to the unknown, the tried to the untried, fact to mystery, the actual to the possible, the limited to the unbounded ... " and to preserve the "appearance of continuity" even in the face of change, On being Cons., 171)169, and then explains how this disposition is reflected in social policy.

sometimes a psychologically pleasant way out of the logical difficulties with which everyone has to struggle today who wants to define his conservatism (*qua* conservatism) in a practical-politically pregnant way. As a rule, the more a "conservatism" is apolitical, the more irrefutable (or at least less worthy of refutation) it appears. Preferably, the apolitical takes the most sublimated form, namely that of a metaphysical-poetic flight of fancy. Thus, the conservative soul is sung about and painted in the deeper harmony of the universe, as well as the serene, erotic and musical nature of this soul, which is averse to violence, fear, and trust<sup>80</sup>, whether from the revolutionary or the reactionary side. A conservative man, "who knows himself secure in the order of being and sees in all images the image of the One", believes absolutely in God and not only feels free of any ideology (!), but is also "a stranger in the modern parliaments, in the halls of mass meetings, in the leafy forest of the press, in the world of today in general".<sup>81</sup> If, on the other hand, the apolitical tries to<sup>1</sup> establish some kind of relation to the earthly reality, then it sometimes longingly remembers the pre-state reality, the ideal world of the small agricultural communities, where the individual allegedly<sup>82</sup> possessed the cautious security in the bosom of the family and religion. This longing is expressed more programmatically and consistently when the hierarchy of values of the pre-capitalist and pre-industrial social order, especially in its Christian component, is affirmed, while the hubris of technology and human rights, in which there is a good deal of divinization of man, is rejected. Christianity and modernity thus prove to be incompatible with each other; and if a conservative of such stature somehow participates in politics, it is only in order to use his Christian attitude to defend against the

He expects the real return of conservatism, however, from the looming bankruptcy of the modern era<sup>38</sup>. The consideration taken even in such seemingly above any "politics" positions

tically: limited government, free economy, freedom, etc. (188ff). (188ff). "This manner of politics calls for a mood of indifference" (195).

<sup>80</sup> Thus, e.g., Heer, Kons. u. d. Reaktion503,512, esp. f., 497,516, f525.

<sup>81</sup> Franzel, trial, esp. 157f.,168.

<sup>82</sup> Thus, for example, Ullmann, Der kons. Mensch, esp. 90-92. Ullmann regards life in the pre-state communities of Sicily and Eastern Europe as particularly exemplary.

<sup>83</sup> So Zehrer, Today again future-oriented. Strong misgivings about modernity and Merkat, too, claims that the "natural-historical development" of mankind, which is synonymous with the "moral order of life," is endangered by its technical-industrial spirit (Kons. Funktion, esp. 43 ff., 67 ff), and thus, like Zehrer, comes close to Romein's position (see note 2 above). Merkat does not speak of a bankruptcy of the modern era, but he, too, sees the chances of conservatism in the fading of ideologies that allegedly takes place today (loc. cit., 81 f.), without thinking of this fading to the extent that it seemed to spread in the 1950s and 1960s,

on the current "fight against „totalitarianism" makes it clear in which camp such "conservatives" feel at home in practice (i.e. if the noncommittal rhetoric against the modern age etc., which does not oblige to abstain from the use of the telephone or modern medicine, is left aside). The pressure of banal everyday life is a heavy burden and forces many a high-flyer to land, or at least to lower regions. This can be seen in the case of "conservatives", who, while expressing their confidence in technical civilization and the possibility of taming its destructive potential, defend transcendence, order and refined intellectuality as true preservers of the values of old Europe, to then think twice and (apparently also in view of the competition of social systems dominating today's historical stage) to unblushingly support the affluent society as the realization of Bentham's principle of the greatest happiness of the greatest number.

affirm<sup>84</sup>. The nice practical result is the spatliberal mass and consumption ge society plus a little environmental protection.

Now, "conservatives" like Mohler, who, in contrast to those just mentioned, neither understand conservatism as a *mere* attitude nor want to fundamentally question the industrial society and the modern world of technology, <sup>85</sup>do not contribute to overcoming the dilemma of (apolitical) conservatism, but rather strengthen the confusion in the "conservative" ranks by presenting new, <hole practically irrelevant> variants of thought and thus triggering new controversies. For the formation of a powerful conservatism, Mohler proposes, as far as his writings are concrete and fruitful in this respect, two things: the proper channeling of people's "monumental need" to "know themselves secure in overarching orders," and the fundamental disengagement of conservatism from liberal appeals to "freedom" and the "individual" as well as from liberal economism in favor of the primacy of the political<sup>86</sup>. As far as the former is concerned, it can mean nothing as long as it remains undetermined what the *specifically conservative* nature of the overarching order may be. It may be known that individuals have also sought and found security within orders and movements that have never been perceived and described as conservative. The boundary between conservative and revolutionary order or security becomes even more blurred when one considers that the order that Mohler had in mind obviously had to be created first and therefore did not have *to be* called conservative (mainly) because it was something conservative.

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The reason for this was precisely the assertion of technical rationality, which he wanted to see forced back precisely for the sake of "natural-historical development".

<sup>84</sup> See, e.g., Klett, Cons. esp. ff845, 853.

<sup>85</sup> cons. and 1962, 25, From right, (34

<sup>86</sup> Cons. and 1962, 27, From right, 62, 15.

The reason for this is rather that it will want to conserve its own components or itself, if it will be there one day. But also the "totalitarian" revolutions, from which Mohler distances himself so emphatically, aim at nothing else than the - if possible - eternal preservation of their own creations; Therefore, Moeller van den Bruck's talk of the "conservative revolution" that should create things worth conserving (a talk with which Mohler must agree in view of his own future-oriented "conservatism") cannot offer any **unprintable** clues for distinguishing the "conservative" from the "totalitarian" revolution, especially since its concrete meaning depends entirely on the arbitrarily interpretable little word "worth. - With regard to the second of the above-mentioned points, it should also be noted that the specifically conservative cannot be readily identified. For the anti-liberal primacy of the political, i.e. the subordination of economic aspects to the imperatives of the struggle for power, has been realized by the communists at least since Lenin, although the Marxian doctrine of historical materialism, which for symbolic reasons *must* remain untouched, was originally strongly influenced by liberal economism and wanted to make the political struggle comprehensible as a function of economic factors in the broadest sense. Apart from this, Mohler does not explain what the primacy of the political or the strong state as an embodiment of this primacy might serve. In view of the role of today's state as the largest administrator, provider and distributor, it seems reasonable to assume that a strengthening of *this* state could or even must eventually lead to the "total state" or to the "state of the people".

totalitarianism". Mohler does not consider this aspect, and this is not only a consequence of the lack of logical coherence of his statements, but also a consequence of the fact that he is by no means prepared to justify such a development. Therefore, he does not know what to do with the primacy of politics, just like other "conservatives" who spoke of it before him<sup>87</sup>. As often as he tries to concretize his wishes, he does not go beyond what even liberals would fully accept, e.g. when he - referring to R. Aron, by the way - sees today's task of the industrial society in "finding forms of life that reconcile efficiency and liberalism"<sup>88</sup>. The end result is ambiguity and vagueness, to which even the inner

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<sup>s7</sup> Thus, for example, Schoeps, Cons. Erneuerung, 79-81. How much Schoeps malgre soi liberal remain mull, shows the embarrassment expressed in these pages. Of the „conservative socialists".

a la Wagener, he writes, they had thought from the., state and its primacy over the economy. In this respect, they were true conservatives" - but he then agrees with their opponents, who defended the inviolability of private property, and approvingly recapitulates the modern liberal-oconomist arguments against the welfare state.

<sup>88</sup> From right, 34.



impulse of the "conservative revolution" from the Weimar period is missing<sup>89</sup>. It should be added that the demand for a strong state can no longer clearly distinguish Mohler's positions from those of contemporary "conservative" liberalism. Already representatives of the neoliberal school argued for a state that was not a mere toy in the hands of the various pressure groups, so that it did not have to<sup>90</sup> give in to all consumerist or economist-oriented desires. Others have also tried to support this plea for a strong state with (old) liberal arguments: only a strong state can maintain the separation of state and society that is vital for liberalism and freedom. By freeing itself from the determinative influence of interest groups and thus becoming less of a social state and more of a state governed by the rule of law, the state would put a stop to the mass society that was driving the fusion of state and society (also <by merging the former into the latter) and thus undermining<sup>91</sup>freedom.

From what has been said so far, it is clear that everything that has a reality reference in today's "conservatism" actually already belongs to (old) liberal thought, whose self-evident component since the end of the 19th century is also the criticism of mass democracy and the welfare state. Both the meta-physical-unpolitical "conservatism" and the "conservative" critique of the capitalist-oconomist bourgeoisie or of the culture of mass society in general are constructs of intellectuals who, because of their intellectual "formation" alone, cannot find their way in the modern, high-tech world. The conclusion, however, would be wrong: because of their narrow social base, ideological phenomena like the contemporary "conservatism" could not count on a broad social impact in the future. If it actually came to this one day, then the "conservatism" forms of social and cultural criticism in use today would be mixed with one another, interpreted, modified or destroyed at will, and selectively asserted - but above all, they would be used and employed according to the law of heterogony of purposes, i.e. completely independently of the intentions, sympathies, and goals of their originators. This could happen when strong anti-communist and at the same time anti-liberal movements emerged, which were willing, in search of ideological legitimation, to use the whole existing array of anti-individualist, anti-economist, etc. ideas to suit the needs of the people. The concrete practical result of the Ri. The concrete practical result of the attack on the world's

In the circumstances of today's spatliberal society, the only possible view of historical conservatism is the denial of the latter. This can be seen in the example of „conservatives" such as Eliot or Dawson, who draw their inspiration from the Catholic Middle Ages and, in their cultural critical urge, come not only to reject liberal democracy and modern democracy, but also to deny the latter.

The latter, however, is to a certain extent preferred<sup>92</sup> as the founder and preserver of a hierarchy and of a collective spirit. But also those who, in the struggle against vulgar materialism, scientism, value relativism, etc., etc., of the late liberal mass society, believe in objectively given hierarchies of values, fixed natural-legal orders, etc., etc., must sooner or later inwardly or politically reject liberalism as it is concretized in the parliamentary and party-political game of everyday life. Orthodox liberals are aware of this and are suspicious of or even hostile to such constructions and all glorification of the pre-liberal past. On the other hand, it would be pointless from a scientific point of view to point the finger of blame at the

The "conservative revolution" ideologically exploited by National Socialism, etc., etc. are examples of such warnings and reminders. Such warnings and reminders, as well as what they are directed against, are the work of intellectuals who understandably tend to underestimate the importance of ideas (and thus of themselves) in history, and therefore think that if all sides thought "responsibly," then the "enemies of freedom" would not have ideological weapons at their disposal, and the latter would have to remain silent. In reality, it is the other way around. Certain ideas have become politically important only because a powerful, politico-existentially already existing bearer resorted to them or simply created them; if this bearer exists, his ideas, however haphazardly or dilettantly they may have been concocted, become important overnight and the object of general attention. In order that the possible beneficiaries of anti-liberal ideas, which today flourish only within the framework of intellectual fool's liberty, do not become powerful, first and foremost successes of liberalism are required both on the domestic and on the foreign political front. To achieve these successes is, of course, much more difficult than to draft invulnerable liberal theories on paper or to display<sup>93</sup> an impeccable liberal attitude in relatively calm and secure times.

<sup>92</sup> -Over Eliot and Dawson in this perspective see O'Sullivan, Cons., 134 ff Eliot thinks that liberalism mi.isse into democracy mi.inden, which in turn is closer to totalitarianism than to liberalism (Ide a, esp. (15, 19).

<sup>93</sup> To complete the present picture, it should be added that the partly positive use of the term conservatism by „left" or "progressive" critics of industrial growth could only increase its ambiguity, see Grn. What does conservative mean here, especially the statements of Eppler, Hasenclever, Kroetz.

<sup>89</sup> Cf. the comments by Maschke, end.

<sup>90</sup> Friedrich, Neo-Lib., with 512, supporting documents.

<sup>91</sup> This is essentially ForsthoFF's argumentation, see the collection of essays Rechtsstaat im Wandel, esp. 26, 39ff., 74( -On the origin of this view from the world of thought of the "conservative revolution," in which the "young conservati ve" direction anticipated central motifs of neoliberalism, see below ch. IV, sec. 3 c, esp. note. 391.

## II. SOCIO-HISTORICAL CONTENT AND FIGURE OF THOUGHT OF THE ANT IABSO LUTIST CONSERVATISM

### 1. Outlook

This chapter aims to present the inner context of the moments stemming from the socio-political reality and the world of ideas of the (already threatened) *societas civilis*, the ensemble of which constitutes the prototype of conservatism and from whose further development and modernized new formulation the conservative structure later offered against rebellion and revolution has resulted - both in its ideological and socio-theoretical content and in its conceptual structure. A complete and successful presentation of these moments thus provides *eo ipso* evidence for the thesis that the conservatism of the and18. century19. was not an original new creation, but also not a mere reaction to the most recent theories and events. Its basic ideological pillars (the priority of the traditionally living collective and of collective reason, which is interwoven with collective experience, over the isolated individual and his *ex nihilo* abstractly planning reason; the unity of law and ethics within the framework of a comprehensive, ontologically founded concept of politics; the *justi tia distributiva* with all its socio-political implications; the defense against the separation of state and society as well as against the revolutionary voluntarism and the belief in the feasibility of things as a characteristic of the modern state, etc.) had already been established for a long time.) had already been established for a long time; it was merely a matter of translating the existing intellectual leitmotifs into the secular language dictated by the Enlightenment and of working them out accordingly. Only the elimination of the erroneous assumption that conservatism originated as a reaction against the Enlightenment or the Revolution enables us to trace the historical-social-political origin of conservatism and to become aware of it once and for all. We are thus in a position to trace the historical-social-political origins of conservatism and to realize once and for all that fundamental conservative ideas neither originate in the ether of intellectual history nor dissolve in it, but are always bound to concrete sociopolitical situations; even quite general ideological positions are in fact ideological extrapolations of sociopolitical positions of the bearers of conservatism. It is precisely by going back to the two or three centuries that preceded Enlightenment rationalism that the original reference of all conservatism in the later struggle against Enlightenment ven basic positions, to the

This allows us to see how the traditional ideas that emerged in the course of the twentieth century, with their claim to theoretical autonomy, were applied to very concrete sociopolitical issues, thus sharpening our view of the origins and character of conservatism. Particularly in the confrontation with the modern idea of sovereignty, the conceptual outlines and practical implications of which were already clear in the 16th century, the traditional ideas of the *societas civilis* took on a new significance.

- Whether of antique, Germanic, or theological origin, the concept of the "Germanic" takes on the forms that conditioned conservative thinking until the beginning of the 20th century<sup>19</sup>.

This orientation of our analysis to the basic socio-political conditions of modern times can alone provide insight into certain essentials of conservatism, which otherwise could neither be recognized nor understood. The study of the historical fate of the bearers of conservatism, namely the nobility, reveals the fundamental ambiguities that have accompanied conservative action and thought since time immemorial. Thus, theoretically, the bearers of conservatism advocate the preservation of the *societas civilis* in its pure state, and in doing so they create utopias set in the past in which the golden age of noble freedom is glorified, but in practice they rarely shrink from the - In practice, however, they seldom shy away from using the superior means of power made available by modern statehood to achieve their own immediate ends, without being aware of the long-term fatal consequences for themselves of such an - admittedly inevitable - inconsequence. Similarly structured and similarly conditioned is the contradiction between the commitment to old traditions, smelling of a speculative attitude to life, which is readily associated with conservatism, and the activism at all levels and with all means, to which the bearers of conservatism have given themselves without much hesitation. The conservatives have indulged in this kind of activism on all levels and by all means, as often as it has been a matter of defending tangible interests. Because of these discrepancies, which we repeat are practically unavoidable, the self-understanding and the concrete beta-acting of conservatism can hardly be brought into full congruence with each other, so that conservatism is always in search of the better half of its split axis. However, it can never reach the pure and gentle ideal type that it defines for itself, but remains trapped in the dilemmas and compromises of the respective concrete situations, which paint its historical face so strongly and treacherously that, in contrast, its values must sound hollow. This remark, however, must not be understood as a moral reproach directed especially against conservatism, especially since the phenomenon extends to all sociopolitical movements and ideologies that history has known so far. The split between self-representation and concrete action is (was) present in all of them, although the content of the respective self-representation and the respective action vary from case to case.

## 2. The conception of law of the *societas civilis* and the modern concept of sovereignty before their ideological background

Law is not made, nor can it be made at all; it is a matter of fact: this is, in a nutshell, the conception of law of the *societas civilis*, from which conservative thought has mainly preserved itself throughout its history and with which it has died. The fact that law *is*, does not mean its mere empirical existence, but its anchoring in the order of being, whose inner content as well as visible manifestation in the realm of humanity it soils to form. Law thus appears as a work

- The law of God is not only omnipotent, but also essentially just; and since God rules over nature and establishes world harmony, divine and natural law coincide to a large extent. Law pervades creation and also indwells the human soul in order to guide it in the healthy shaping of its socio-political behavior. In this ontological rootedness, law remains inviolable and essentially inviolable, no matter how often individual laws and regulations may be considered to go back to it. No human will, however, can overturn or destroy law as such, i.e. as it is rooted in God and nature, because it is simply not a product of human will. Law, as it strikes the *societas civilis*, has therefore - and this is decisive - no settling character, it is not the work of a certain sovereign individual, of a corporation or of a state, but these, on the contrary, must stand under the agide of law, represent and defend it, <1 be<sup>1</sup> legitimized by its good testimony. Any voluntarism and any belief in the feasibility of social institutions based on law thus remains (at least on the theoretical level we are talking about here) a *limine verpont*. In the elaborated scholastic conceptuality, this rejection of voluntarism takes the form of the thesis that the law as an application of law is *rationis ordinatio*, that is, it is the instruction of reason, which is supra-personal in its generality, and not of a possibly volitional personal will<sup>2</sup>. Accordingly, the command character of the law is

<sup>1</sup> Zurn Obigen Lewis, Med. Pol. Ideas, I, 1 (; Ullmann, Med. Idea of Law, esp. 35f., 46; Kern, Law, 3, 5; Gierke, Cooperative Law, III, f609)

<sup>2</sup> See, for example, Thomas, Summa, I-11, qu. 90, art. 4. The same principle is later advocated by The close interweaving of the social-theoretical thinking of (late) scholasticism with central aspects of anti-absolutist conservatism (cf. sections 3c and 4b of this chapter) was only possible because the scholastics represented the legal conception of the *societas civilis* and rationalized it with their own conceptual instruments.

disputed. The law is obeyed not because it is a command, but because it derives from the divine-natural right; therefore obedience to the law can be demanded in the same sense as obedience to God. Divine and natural law should interpenetrate <las positive, so that <its task actually consists<sup>3</sup> in the application and concretization of higher commandments and principles taken from the order of being established by God. Although <the positive law admittedly could never reach the perfection of the divine-national one and therefore both had to be separated from each other with the necessary theoretical sharpness, whereby the Siindenfall served as a visible historical landmark of the change from divine-national to positive law, <loch, in view of the unacceptable legitimizing function of the former, persistently raised the question of interpretation and power. <sup>4</sup>The casuistry that developed in the treatment of this inexhaustible theoretical and practical question has remained an indispensable component of conservative argumentation in general.

A right rooted in the order of being itself must be as old as that order. Seen in this way, <las age as an indispensable attribute of valid law is not a mere quantitative determination, but automatically refers to <las growing together of law with the order of being, to its ontological quality. Ancient law is therefore eo ipso better than <las jingere and can, indeed must, break this - in contrast to what is true in modern times. The supra-personal and non-personal tradition is valued more highly than innovation and personal setting, it is the real source of law, since its beginnings are lost in the unthinkable time of a state of nature, in which no fall of sin (theologically or otherwise understood) between human order and its natural order had torn open the gap that has existed since then. The law coincides, at least in the ideal case, with the customs of the community, in which God's and nature's will translates itself into visible reality. The custom escapes any decisive influence by the will of individuals; it remains the collective work of a collective, which remains active beyond the individual sexes, and which is able to make use of its experiences.

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have. In the form in which it was ideologically used by the conservatives, this conception of law forms a mixture of ancient, Germanic and theological-scholastic materials. The finding of ancient or scholastic reminiscences in the conservatives of the 16th or 19th century should therefore neither be alienating nor considered a groundbreaking discovery. About the Platonic, Aristotelian and Stoic theory of the v6u0<; as an essential component of the world order and ruler over all members of the community see the first chapters of Friedrich, Philosophy of Law.

<sup>3</sup> See, e.g., Thomas, Summa, 1-11, qu. art95, . 2; Carro, Soto, esp. ff121. , ff;179 Suarez, De legibus, 18-191,3, u.10 .3,21,

<sup>4</sup> Cf. Gierke, Althusius, 272ff; Lewis, Med. Pol. Ideas, I, 11.

The reason, which is the product of the will of the individual, is the will of the individual, which is the will of the individual. Custom (mos, consuetudo), in other words, cannot be the product of the establishment of a superior will, but it submits to the will of all individuals. This becomes evident when concrete needs of the day in a community call for decisions that transgress the existing law. In this case, new law is not created according to the will of a sovereign authority, but the prevailing custom is interpreted in the sense of justifying a course of action that can meet the need that has arisen. The confirmation and development of law is thus not <by lawmaking as we understand it today, but rather <by a constant iuris dictio, namely <by an activity that can be described as judicial rather than legislative. Since the idea of creating new law is quite remote, it is simply a matter of deciding on a concrete case, of remedying a defect, or otherwise of providing a remedy, on the basis of the principles of law which are generally known and considered to be indispensable. The steps taken for this purpose, insofar as they seem to run counter to the prevailing practice, are not presented as legal innovations, but rather as a rediscovery of the "true sense" of law that has somehow been lost in the meantime and as a return to its original sources. This fiction is maintained even when the deviation from the previously practiced custom is quite large. What remains decisive is the will to know oneself to be in harmony with the custom in every action and to cope with the respective practical needs without violating (the idea of) it. The fiction of insisting on the old law even in the case of a de facto deviation from old customs was, of course, more easily maintained if the change made met with the approval of all concerned; since, as we shall see in a moment, the inviolability of well-acquired private rights was one of the principles of the old law, even an important change, which, however, did not give rise to any complaint of violation of such rights, could not be regarded as a change, but rather as a confirmation of the old law. Thus life went on, while the theory remained unchanged<sup>5</sup>. It is not difficult to recognize in this practice the basic principles of the procedure for the realization of inevitable changes, which the conservatives proposed as an alternative to the principles of revolutionary (i.e., breaking with tradition *and* undertaken unilaterally) change. In doing so, of course, they failed to see that the general belief in the superiority of old law, which no longer existed in their time, as well as the general will to remain with it, even fictitiously, was an indispensable prerequisite for the successful completion of the aforementioned process.

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<sup>5</sup> On the contents of this paragraph, see Carlyle-Carlyle, History, II, 98 ff, 105 ff, 155 ff, III, 46, V, 45ff; McIlwain, High Court, 44 ff; Lewis, Med. Pol. Ideas, I, 4; Kern, Law, 6, 17 f, 24 et seq.; Kern, God'sgn., f128.



From the rootedness of law in the order of being follows not only that it is old, but also that it is good. God-given or nature-given law must embody the idea of justice per se; as the aforementioned penetration of positive law by the divine-natural implies, every law must be just, otherwise it cannot be respected as law: all the great theorists of the *societas civilis* have<sup>6</sup> agreed on this. No distinction is made here at all between legality and morality, between law and good manners, which in turn has the consequence that the separation between the public sphere (as a space for the development of legality) and the private sphere (as a space for the development of morality) as well as the practical-political superiority of the former over the latter remain unknown. The "well-acquired" private right is absolutely inviolable in the perspective of this conception of law, since it cannot be broken by any stronger public right opposing it. Thus law, considered as a whole, is not a norm standing above the individual private rights and independent of them or even opposed to them, abstract in its purity, but rather a law encompassing and protecting all private rights; to the extent that law in general and as such is something more and something other than this or that private right, this means only that law comes into effect only when not only this or that, but all private rights are protected without exception. Every holder of a private right may therefore call the infringement of it a breach of the right in general and defend his own right.

The first is to equate the defense of the law in its eternal validity<sup>7</sup>.

It must be emphasized and kept in mind in order to understand the historical nature of conservatism that the right of all members of the community to invoke the law at all for the protection of their own private rights in no way implies the idea that patrimonial rights were equal to each other because they could claim law and justice equally. Any idea of equality in our modern sense remains quite alien to the legal conception of the *societas civilis*. Justice, which must be indispensable for the right deserving this name, is understood here exclusively as (Aristotelian) *justitia distributiva*, which guarantees to each his own. But the fact that everyone is entitled to his own does not mean that everyone may consider the same as another as his own; even if all may claim the right and its protection, not all may claim the same rights. Precisely for this reason rights are private and concrete, because they are

<sup>6</sup> Aristotle, *Nic. Ethics*, V, 10, & *Pol.*, III, 16; Augustin, *Civ. Dei*, XIX, 21; Thomas, *Summa*, I-11, q. u. art. 96, 4; Suarez, *De legibus*, I, 6, 21. 3, 10, 7.

<sup>7</sup> Kern, *Recht*, 7 f., 26, 31; Kern, *Gottesgn.* Brunner considers this identification of every legal claim and every positive right with law and justice as the specific feature of the *societas civilis*' conception of law (Land, 148ff.).

and cannot be translated into a general, i.e. necessarily abstract normative language, although their pyramid may stand under the aegis of natural law as the supreme norm. The essence of *this* norm, however, consists precisely in the fact that it (theoretically) ensures the division of rights in the form of a pyramid; right and pre-right are by no means mutually exclusive here. Thus, law can coincide with the hierarchically structured sum of all recognized and de facto respected private rights. A fundamental difference between the natural law of the *societas civilis* and the modern law is thus that, while in the former general norm and factually existing rights basically coincide, whereby rights can certainly be regarded as privileges, in the latter the general norm and the factually existing rights basically coincide: In the latter, the general norm is directed against the existing rights, insofar as these are suspected of being prerogatives; the general norm in modern natural law is therefore conceived and formulated with regard to those *griens* which exclude privileged treatments a *limine*. Although it can be said that in modern natural law, the idea that law is not made Although it can be said that in modern natural law the idea lives on that law is not made but is simple, it is on the other hand the case that in the now thematic contrast between the supreme norm of natural law and existing (prior) rights there is the implication that natural law has always existed but has not been made real, so that for its realization a conscious human expression of will and activity is required. This is where what from a conservative point of view is called the voluntarism of modern times makes itself felt, and therefore the view (often held by liberals) of the quasi-idyllic continuity of natural law within the framework of "occidental tradition" obscures very important shifts in content in the course of its history. The reason why modern natural law is essentially different lies in its detachment from *justitia distributiva*, a detachment which in turn is at least indirectly related to the modern concept of sovereignty and thus also to the thesis of the settling character of law. This will be discussed later in this section.

Under the dominance of the legal conception of the *societas civilis*, therefore, each individual could justify his own legal claims by invoking the eternal and universal law, but no one could act as a setter of law by virtue of his own will and property. Precisely because of their immediacy in law, the powers of the *societas civilis* could and were allowed to stand in each other's way and to oppose the attempts of the other side to develop absolute claims to power with good ideological reasons and with a pure legal conscience. Thus none of these powers can be said to have<sup>8</sup> the *pradikat* of the sovereign in the modern sense. The talk of papal plenitude *potestatis* and the like has, of course, tempted some scholars to view the modern idea of sovereignty from a co

<sup>8</sup> For details, see Quaritsch, *Staat*, 44-106. Cf. Brunner, *Land*, f. 161

to want to derive from medieval perceptions<sup>9</sup>. However, such a derivation is our possible, if the essence of the modern idea of sovereignty is left out, i.e., when sovereignty is identified with mere de facto power of disposition over persons and things, without consideration of the question of who legitimizes or (theoretically) preserves this power of disposition. While the modern sovereign himself creates the law that legitimizes his power of conferral over persons and things, the pope, for example, invokes the divine-natural. The very fact that he does not arrive at any groundbreaking ideological legitimation of his claim to plenitudo potestatis reflects the bias of his de facto power of disposition or position of power in the traditionally given limits of the polycentric *societas civilis*. Nor does the emperor think of establishing new law when he goes against the pope; the theory of the two swords remains inviolable, and the imperial or royal interventions in the right and property of the Church are<sup>10</sup> undertaken in the name of *necessitas*. It would also be wrong to confuse the tendencies of secularization in the political theory of the late Middle Ages with the modern idea of sovereignty, even though the secular attitude in the broad anti-ecclesiastical sense contributed to the formation of this idea. Initially, however, the forefront of the secularizing tendency turned not against the legal conception of the *societas civilis* as such, but rather against papal ambitions. Thus, Philip of Scania's defenders deployed their largely secular argument primarily against the sacerdotium, but at the same time they theorized that the king's position vis-à-vis the rights of his subjects would not be immeasurably strengthened; it was on this basis that Philip gained the support of the estates<sup>11</sup>. Certainly, Aristotle, who had been received in the meantime, was also utilized by adherents of the papal plenitudo potestatis, albeit with some deductions, but overall Aristotelian paganist naturalism demanded the secular tendency, so that the polity could be conceived as an autarkic and autonomous organism, thus independent of the church; the grinding of this view with the argumentation of Philip's defenders resulted in a work such as the *Defensor Pacis*.<sup>12</sup> Our thesis that there was no automatic theoretical connection between secularization tendency in the narrower sense and the modern idea of sovereignty is also supported by negative evidence from later times: the implementation of the latter took place, at least in part, under the sign of God's grace.

<sup>9</sup> Above all Wilk's problem, esp. 154ff., 254ff. Cf. Gierke, Althusius, ff.139

<sup>10</sup> Wieruszowski, *Vom Imperium*, 165f., ff169 A sentence by Antonius de Butrio falls the conception of the *societas civilis* in this question pregnant together: "papa vel imperator non sunt supra ius gentium vel naturale", *Consilia*, LXXXII, =25 f. 33v.

<sup>11</sup> Scholz, *Journalism*, 216110., 325ff, 413;370, Wieruszowski, *Of Empire*, 159f., 162f.

<sup>12</sup> Scholz, *Journalism*, (117, 450ff Cf. Ullmann, *Principles*, f237.

The contrast between the legal conception of *societas civilis* and modern sovereignty This idea of the king's deed is evident in the medieval doctrine of the rights and duties of kings. The sharp Aristotelian opposition of king and tyrant became a commonplace of medieval political literature because it expressed the traditional Germanic conception according to which the king must be the guarantor and the preserver of the existing right rooted in the divine-national order of being; the "common good" that the king has to uphold has as little to do with the modern conception of welfare as the "common good" that the king has to uphold.

The natural law of the *societas civilis* with the modern conception of human equality: it is identical with the preservation of law and peace and at the same time forms the legitimation and the limit of royal power. The king's commitment to law, which is also solemnly affirmed in the crown vows, thus means that the orders or laws that become necessary in each case are not products of the ruler's will as the ruling will (*lex* and *voluntas* are, by the way, explicitly defined in the law). The law is made by general consensus and cannot claim the status of law in the higher sense of the word, since this law can only originate from unthinkable customs, from the traditionally given life of the community. Accordingly, the medieval king has two faces: he is appointed by God as the guardian of law and justice, he enjoys God's grace, and he remains above criticism; he is the only person who can claim the status of law. He is above any criticism; as the founder of laws (within the framework of the law), he is merely *primus inter pares*, a feudal lord who is granted the loyalty of his subjects only under certain conditions and who must expect open and legitimate resistance if he does not fulfill<sup>13</sup> these conditions - if the resistance is only against the king as feudal lord, but not against him as the bearer of the law, If resistance can be directed only against the king as feudal lord, but not against him as the bearer of the divine pardon, it is simply because the latter functions as a visible symbol of the higher legal order, against which rebellion is considered unthinkable. The disputes between the king and the rest of the members of the *societas civilis* thus take place on a subordinate level, where the politically fundamental is not at issue. On the contrary, this fundamental is asserted by all parties in lofty terms to justify their own actions and goals in the realm of power-political prose. The powers of the *societas civilis*, who oppose an extension of royal power in the direction of modern sovereignty, point out that the God's grace in the face of its mentioned dependency

<sup>13</sup> For the above, see Aristotle, *Pol.*, V, 4 and 10; Merk, *Ged. d. gem. Besten*, esp. 460 f; Gierke, *Genossenschaftsrecht*, III, 562ff; Carlyle-Carlyle, *History*, I, 219 ff, 229 ff, III, 30 ff, 41ff, 125 V, 37 n. 2 (juxtaposition of *voluntas* and *lex* in Bracton's formulation), ff86, ff468; Carlyle, *Pol. Liberty*, 17;14, McIlwain, *Growth*, ff185.; Kern, *Recht*, 45 ff., 52ff.; Kern, *Gottesgn.*, 131 ff., 141f.; Ullmann, *Med. Idea of Law*, 52 ff.; Ullmann, *Principles* 150ff.; Quaritsch, *State*, ff107. Cf. op. cf. note 82.

The fact that the king, as the bearer of the divine right, is *legibus solutus* cannot be interpreted as a denial of the rights of those who do not share it. If, therefore, it is said that the king, as the bearer of the divine right, is *legibus solutus*, then this can, as

Thomas, can only be understood as meaning that the king is<sup>14</sup> released from the *vis coactiva*, but not from the *vis directiva* of the right. This point

will play an important role in the ideological struggle of conservatives against absolutism's claim to sovereignty into the 19th century. Equally important for the centuries-long ideological debate we are interested in here is the conviction associated with the legal conception of the *societas civilis* that the king could and should not make law any more than any other individual and should therefore not be regarded as a legislator but rather as a judge who adapted the existing law to current circumstances with a view to urgent needs and intervened accordingly; the *merum imperium*, which was later interpreted as sovereignty in the modern sense, is originally identical<sup>15</sup> with the higher form of *iurisdictio*. Who after

The fact that the king continues to be the supreme judge in the 16th century is not intended to glorify the king's powerlessness, but on the contrary to deny him the modern *pradikat* of the sovereign legislator. At the same time, the identification of this competition between the judicial and the legislative function sharpens the view for arguments and problems that have been on the agenda much later, namely in connection with the question of the separation of powers. For the separation of powers is also closely connected with the modern idea of sovereignty - at least insofar as the legislative power, in its distinction from the others, is defined as the clear sovereign to which the judicial and executive powers, with all their independence, are to be subordinated; the powers are defined in terms of their independence.

m. a. W. separated, so that the primacy of the legislative can become clear. It was precisely in view of this implication that the separation of powers was fought against by the conservatives of the 18th and 19th centuries. However, we shall return to this point later<sup>16</sup>.

In its ideal type, the modern idea of sovereignty looks in all central points like a reversal of the described conception of law of the *societas civilis*. The decisive change concerns the belief in an eternal and independent, as it were ontologically given right, which is now replaced by a partly historical-relativistic and partly voluntaristic conception. In the process, of course, the idea of a divine natural right, in view of its long prehistory and its factual

Power, which in the 16.17th century still had strong social *stii*zen as well as deep psychological roots even among representatives of the new way of thinking, was at first not openly and directly attacked, but was tacitly set aside in all lip service to it and made practically non-binding. Theoretically, this was made possible by a sharp distinction between *ius* and *lex*, so that, while the *ius* remained nominally untouched as the highest (God-given) norm, the (human) *jex* became the practically autonomous vehicle of the absolutist will striving for sovereignty. If the legal conception of the *societas civilis* demanded the closest possible interweaving of *ius* and *lex*, i. e. Whereas the *societas civilis* required the closest possible interweaving of *ius* and *lex*, i.e. - in *stat u isto*, i.e. under the conditions of the case of *sin* - the generous approach of the *lex* to the idea of justice (as a prerequisite for its validity as *lex*), now *ius* and *lex* are no longer or not primarily seen in their coherence, but rather in their opposition, which results from the new view of the law as a pure product of the establishment of a will. This constellation is encountered both in its ambivalence and in its revolutionary novelty in Bodin, who, in order to keep away the odium of Machiavellianism, which considerably impeded the political-propagandistic work of Absolutism, theoretically allows the old *ius* to stand and even repeats the commonplaces about the law.

Bodin reiterates the idea of a "just" ruler in the traditional sense, but in another sense, breaking with tradition at the crucial point, he distinguishes between *ius* and *lex* and defines the latter as the "*commandement du souverain*," which depends<sup>17</sup> on his "*pure et fran che volonte*. That it is not the formal commitment to the *ius* but rather the new conception of the law that is the decisive factor here becomes visible in Bodin's subordination of customary law to the law, which is equivalent to a subordination of the tradition to the decisive deed and to a dissolution of the slowly grown and jointly developed by the instantaneous and autonomous sovereign. In any case, Bodin is aware that *coustume* and *loy* represent two quite different socio-political concepts, indeed two opposing attitudes to life. If the power of the *coustume* is based on permanence and consensus, the law derives its power from the power of the commander; the main characteristic of the absolute power or sovereignty is to give laws to the subjects without needing their consensus<sup>18</sup>. Since the law does not take into account the will of the subjects, coming into being *ex nihilo*, "*en un moment*", it is also different from the higher law, as the *societas civilis* understood it, Jos. The fact that the law as a whole has lost its previous status is shown by the claim or the practical possibility of the ruler to override that law which his own will has brought into existence.

<sup>14</sup> Summa, I-11, qu. 96, art. 5 ad 3. On the medieval use of the formula, which was anti-ecclesiastical but not in keeping with the modern understanding of sovereignty *princeps legibus solutus*" see. Brunner, Land, 436f, u. cf. u. section b of 3th chapter.

<sup>15</sup> Lewis, Med. Pol. Ideas, I, ff; 241 Gilmore, Argument, 30, 32.

<sup>16</sup> S. u. section d3 of this chapter and ch. III, section b.3

† Six livres (1576), and 193, (1583), 133.

<sup>18</sup> A. a. (O.1583), and 222, 142, (1576), 197, 199.

however imperfect - or the right, it cannot bind the one who sets it and therefore stands<sup>19</sup> above it.

The voluntaristic conviction of the feasibility of the law, now detached from the old law, thus gave the formula "princeps legibus solutus" a much more drastic meaning than the one it had been allowed to have during the preceding centuries. The resulting turn of events was reflected, among other things, in the universal use of the classic opposition of king and tyrant,<sup>20</sup> and in the theoretical death of the right of resistance, which, after the divorce of *lex* and *ius* and the *de facto* supremacy of the former, lacked legal foundations<sup>21</sup>. Although the aforementioned odium of Machiavellianism, which the rising absolutism in the concrete situation of the 16th and 17th centuries had to keep away from itself at all costs, was not a problem. Although the aforementioned odium of Machiavellianism, which in the concrete situation of the sixteenth and seventeenth centuries had to be kept at bay at all costs, demanded restraint and thus allowed old views to live on even in the circle of their *de facto* graves, and although absolutism, as long as it was historically effective, was never able to assert itself against the local powers of the *societas civilis* across the board, a qualitatively new and hitherto unheard-of claim, which was connected with a new way of acting and a new objective, had in the meantime unmistakably made itself known. This claim went all out in the sense that it could no longer be satisfied with the traditional royal sovereignty, which was understood as a loose sum of separate competences and prerogatives in various fields. The new sovereignty appears as a single and unified competence, which encompasses and even justifies all the other individual rights of the sovereign: it is the competence to issue command-laws, as the ultimate concentration of all the powers and prerogatives of the sovereign, which can no longer be derived from a higher authority. The sovereign rule thus established cannot, of course, tolerate a self-sustaining center of power next to it; on the contrary, the concept, existence and survival of the state must now be<sup>22</sup> made dependent on the uniformity and exclusivity of the sovereignty. What we have called the legal immediacy of the *societas civilis*, i.e., its ability to refer directly to law and justice, is now to be made dependent on the unity and exclusivity of the sovereignty.

<sup>19</sup> A. a. (0.1583), 444, 132. The view that the sovereign ruler may disregard the laws had already gained considerable ground in the first half of the sixteenth century (characteristic evidence in Lemaire, *Lois*, 109; see Weill, *Theories*, esp. 16 ff); L' Hospital, who - like Bodin - condemns tyranny in the old sense of violating the law, but at the same time does not want to know anything about the right of resistance, pronounces it in the *Etats Generaux* of 1560 (Weill, *Theories*, 46 ff, 49), and Heinrich III. does the same in Blois in 1576, who, moreover, establishes a connection between his capacity as "auteur" of the law and his release from its power (Labbite, *Predicateurs*, 125). The same connection is found in P. de l'Hommeau (Mousnier, *Venallite*, 96) and others (Albertini, *Thought*, 49)48,. Cf. Carlyle's remarks on Le Bret (*Polit. Liberty*, (40).

<sup>20</sup> Mandt, *Tyrannislehre*, ff.71

<sup>21</sup> Cf. Brunner, *New Ways*, 170.

<sup>22</sup> Quaritsch, *State*, ff255, esp. f259., 269.

The right of the sovereign to invoke the judicial function falls away as soon as the sovereign power acquires the modern predicats of uniformity and exclusivity. The uniformity and exclusivity of the sovereignty require, therefore, as we must emphasize, the displacement of the judicial function by the legislative one in the field of the sovereign's competences. These are two parallel processes, or rather two complementary aspects of one and the same process. The transition from the old conception (royal power as a sum of individual prerogatives and king as judge) to the new one (unified sovereign power and sovereign as legislator) took place slowly and on refined ways of interpretation, but (conceptual) terminus a quo and terminus ad quern are fixed and can be<sup>23</sup> reconstructed with ideal-typical clarity. It should be noted that the displacement of the judicial function by the legislative one in no way implies that the sovereign in the new sense had renounced the role of interpreter of law and justice. The opposite was the case. As the creator of the law, the sovereign alone felt called to provide its only true, valid, and binding interpretation; making the law and knowing its deeper meaning seemed to go together logically and practically. The monopoly of interpretation of the sovereign lawgiver and victim put an end to the "feudal anarchy" that seemed to arise from the fact that each individual could legitimately lay claim to the interpretation of the law of the *societas civilis*, which no one had created and therefore all knew equally well or badly. The adherents of the new idea of sovereignty point out that the inexistence, eternity, and unchangeability of law do not give it an absolutely binding power in practice, since everyone can<sup>24</sup> twist and turn it as he or she pleases and needs. For this very reason, they put in the foreground the question of interpretation, which they theoretically solve by identifying the creator and the interpreter of the law. Thus, when they speak of

<sup>23</sup> Gilmore (*Argument*, esp. 27 ff, 40 f., 47 (, 55 (, 67 ff, 95, 108) has described how the *merum imperium*, which in the Middle Ages was granted to the king or emperor as well as to the *illustres* and *clarissimi*, has been reserved exclusively to the king in France since the beginning of the 16th century, although it is initially still understood as a judicial and not a legislative function. Later, in the 16th century, it is assumed that the *magistratus* receive their *imperium* from the king, who, however, can no longer delegate the right of *condere legem*; thus, the legislative function in its exclusivity comes to the fore. Obergang, of which we speak here, cf. Church, *Const. Thought*, 50 ff. Willoweit (*Rechtsgründen*, 121 ff.) also shows very well how, after the assertion of the modern idea of sovereignty in Germany, territorial power is no longer understood as *jurisdictio*, but as commanding *superioritas* (*summa potestas*, *majestas*), which extends to all members of the state.

<sup>24</sup> Thus Hobbes, *De cive*, XII, § 4. But we also encounter the argument in the pamphlet literature of the seventeenth century. As an anonymous author writes in 1652: „car de dire que la loi aura cette puissance absolue, c'est un erreur, vue qu'en tous les differends chacun allegue et tire la loi de son cote" (quoted in Doolin, *Fronde*, 102; Kossmann, *Fronde*, 13).



Interpretation, then they obviously mean anything but the one that the König-Richter undertook with regard to eternal law.

From the modern idea of sovereignty a certain socio-political model can be derived, which is just as incompatible with the constitution of the *societas civilis* as the conviction of the feasibility of the law is with the belief in the ontological rootedness and unchangeability of law. Thus, by visualizing the logical and at the same time historical consequences of the modern idea of sovereignty, we see before us the outline and the essential features of that enemy against which the conservatives have resisted to the bitter end. Let us summarize these consequences: a) If the law - in its detachment from law in the old sense - is feasible, then it no longer constitutes a guarantee of preservation, but rather an instrument for reform or even revolution. For its feasibility results from its dependence on the will of the respective sovereign, i.e. on a will that becomes recognizable as such precisely in its deviation from the collective will or from the traditional life of the community - otherwise the definition of the law in terms of *this* will would be superfluous and meaningless; this is attested historically by the fact that the theory of the feasibility of the law was drafted in parallel with the manifestation of the absolutist will to reform and as its justification. A will that creates sovereign law *ipso facto* rises up against the common law, since in agreement with it any creation of sovereign laws is justified. The will to create sovereign law is therefore automatically tantamount to the desire to transform, more or less, the life of mankind as it has been historically presented. Sovereign in the full modern sense of the word is ultimately the one who enters the scene as a historical demiurge, who wants to model history on the basis of his own plans and ideas. From this it follows that history is not a rounded and closed circle in the shadow of the eternal order of being, but an open and dynamic movement. b) If sovereign is the one who does not allow himself to be commanded by anyone and who can command everyone without any exception<sup>25</sup>, this entails an abolition of rule as a personal dependence, which was characteristic of the *societas civilis*. The people who lived in the wide circle or periphery of the *oikos* and were directly subordinated to its head according to the self-understandings of traditional rule, now come under the direct jurisdiction and constitutional power of the sovereign, are led according to his will and law, which now also the head of the *oikos* has to obey. In place of the social pyramid, each level of which was directly dependent only on the one immediately above it, there is now a smooth level on which all individuals stand and all are equal at least in the sense that they can all be directly commanded by the sovereign, i.e. all are indifferent to the state. The

<sup>25</sup> By Bodin's definition, *Six livres* (1576), 232.

The unified and exclusive legislative competence or the monopolization of state power thus has two effects. First: The abolition of rule in the form of personal dependence makes *equality* of persons to each other the condition of rule; For, if all are indivisible, the laws of the sovereign apply equally to all; right and prerogative are now mutually exclusive, and if anyone enjoys a prerogative, it is not by virtue of his own right, but by virtue of the exclusive prerogative of the sovereign to confer prerogatives; the prerogative thus becomes a confirmation and not a limitation of sovereign power. Secondly, sovereignty, if it wants to be all-encompassing, must be able to reach and command every individual; therefore, it divides society into *individuals* (formally) independent of each other, *and* it construes the social whole as the sum of them, i.e., quantitatively and no longer qualitatively. The individual is now discovered and, like equality, glorified as a value in itself; but although individualism and freedom must be presented as the harbingers of human emancipation in the struggle of the new religion against the old, in reality they form only the necessary historical framework of all forms of domination that are possible on the basis of modern sovereignty. c) If sovereignty wants to emerge as a truly ultimate instance and, as such, to acquire legitimacy and deeper loyalty, it must at the same time destroy that to which it refers - namely the state,

<The sovereign is the one who monopolizes the powers of the state and who raises it to the highest purpose at least on earth. State reason means that everything that is done by the sovereign has to serve exclusively the preservation of the state as the highest purpose on earth. The unity of religion or morality and politics, which was decisive for the conception of law of the *societas civilis*, is dissolved; whoever in the future wants to restore this unity, will have to take up the cause of the state. o anyone who in the future pleads for the restoration of that unity is basically wishing for the abolition of modern sovereignty; it must, moreover, be clear at all times that the preached and demanded submission of the state to religion in its concrete social implications meant nothing other than a return to the theologically sanctioned *justitia distributiva*. However, the raising of religion or the unity of ethics and politics against modern sovereignty also has another, albeit related, reason. If the state, which stands under the sign of modern sovereignty and carries out autonomous politics, has the highest purpose, which as such legitimately demands the submission of all individuals to its commandments and at the same time withdraws from the commandments of ethics or religion, then it can secure the obedience of all, also of the believers, only by means of the separation of private and public, i.e. of moral-religious attitude and outwardly visible way of acting. If the *societas civilis* was socio-politically polycentric and ethico-religiously or ideologically uniform, the modern sovereign state as the founder of universal legislation is, conversely, politically uniform and - at least in a certain phase of its development - ethico-religiously polycentric, i.e. tolerant. d) The detachment of the sovereign state from the ethico-religious outlook of the *societas civilis*, namely

precisely for the sake of the formation and assertion of its sovereignty, causes a general shift of priorities toward the sacred. In particular, the sovereign state legitimizes itself vis-à-vis its subjects by its promise to preserve peace and welfare for them. An eudamonic attitude emerges, which often combines with the individualism also demanded by the sovereign state: this is already the germ of liberalism, which opposes absolutism, but not - as must be emphasized/3

- against the modern sovereign state as such, although, on the other hand, it is not politically and socially identical with the latter for all times.

In the model just sketched, all political possibilities of modern times and thus all possible enemies of conservatism are included. Only on the basis of the modern idea of sovereignty do absolutism and liberalism, (social) democracy and dictatorship of all shades and aims take shape - at least in the way that they all directly or indirectly presuppose the state immediacy of all individuals as well as the uniformity and exclusivity of sovereign power; Their differences from one another lie not in this, but in their respective conception of the breadth of the sphere of competence and of the manner of the origin and legitimation of this sovereign power. In order to understand the historical content and essence of conservatism, it is necessary not only to make this observation, but also that the modern idea of sovereignty is a component or aspect of a worldview complex, which in its basic structure appeared multidimensionally already in the course of the 16th century. As said before, the transition to a voluntaristic attitude and to a decisive activism with a tacit or open rejection of the speculative-passive devotion to the traditional conception of the social order and the order of being is an essential concomitant of the idea of sovereignty. Without raising the fruitless question once again in which area the decisive shifts and restructurings first took place, which then set the social whole in motion, we want to show here in brief the simultaneous presence of the same structure of thought and the same attitude to life on several levels, in order to understand the whole of the social system.

the scope of the challenge facing the conservatoire.

vism as a continuator of the (thought) traditions of the *societas civilis* at once.

a) The activism of the modern idea of sovereignty finds its first counterpart in the field of socio-political thought itself, namely in the overturning of the traditional conception that the multitude and speculative life should be valued more highly than manual labor. This view, which in antiquity had been given a philosophical-anthropological definition by Plato and Aristotle, was modified by the considerable revaluation of work on the part of Christianity, but the old order of precedence remained untouched insofar as Christianity, too, saw the highest perfection of man in the speculative elevation of his soul to God. In the 16th century now begins a systematic defense of (manual) labor against the reproach,

vulgar employment or the employment of the vulgar. This defense is sometimes put forward by people who themselves work as craftsmen and are now proud of it<sup>26</sup>; it expresses not only an egalitarian concern, but also the increasingly strong desire to actively shape reality and thus to grasp it as changeable and changeable: the new primacy of the *vita activa* over the *vita speculativa* is thus articulated in the new evaluation of work. b) The changed attitude towards work and *vita activa* corresponds structurally on the cosmological level to the replacement of the primacy of rest by the primacy of movement. The necessity of this correspondence results from the inner connection between the ideal of the speculative life and the thesis of the higher rank of rest or of the immovable-unchangeable in the Aristotelian and Christian worldview, so that/3 the denial of the former had to be accompanied by the rejection of the latter. The speculation culminated in the intellectual apprehension of God or the life in God, which in turn is immutable and therefore immovable, even if it sets and holds the world in motion. The reversal of this view is that the deed constitutes the actual realm of development of man, just as the world is formed in the movement, which is eternal and can perpetuate itself by itself. The movement now literally embraces the universe and engulfs the immovable heavenly sphere, which in the ancient Christian cosmos stood<sup>27</sup> above the sublunary region of becoming and passing away. The traditional order of being collapsed in the same sense and at the same time under the blows of the movement as the old law, which was supposed to be anchored in this same order of being, shrank from the activism of the new doctrine of sovereignty, for which the law and therefore also society and history are mobile and changeable. c) The conviction of the feasibility of the law and of human things in general parallels the continuous revision of the Aristotelian determination of the relations between art and nature. Whereas for Aristotle art could produce nothing more than a necessarily imperfect attempt at imitation, it is now assumed that nature can be completely reconstructed by art, or even that it can be reconstructed by art.

replace<sup>28</sup> Compared to the natural product, the artificial product seems to have the advantage of

since/3 it is known in all details and therefore also completely controllable. Creating, knowing and ruling thus seem to go together, and the principle "*verum factum convertuntur*" is<sup>29</sup> confirmed. We remember that/3 also

<sup>26</sup> Rossi 61, 63. also cites the most important literature on the history of the valuation of labor and<sup>27</sup> its transformation in the century 17. 16.

<sup>27</sup> On the new theory of motion and its effects, see Kondylis, *Aufklärung*, esp. 107f(, 236(

‡ Evidence in Rossi, *Filosofi*, ff. 139

<sup>29</sup> On the spread of this principle in the early modern period see Kondylis, *Metaphysikkritik*, ch. I, para. a2, and ch. III, para. 1.

the interpretation of the law was perceived as truly binding and indisputable only when the interpreter and the creator of the law were united in one person. d) Finally! I must point out the fundamental structural similarity that exists between the overthrow of the hierarchies of the cosmos and the unification of the universe <through the natural philosophy of the Renaissance and the later mathematical natural science, on the one hand, and the (at least potential) leveling of the social order of the *societas civilis* <through the modern idea of sovereignty, on the other hand, which knows only individuals, so that it can grasp and command all individuals. And just as the unification of the universe became possible only by virtue of the assertion of quantitative observation, especially since the earlier cosmic hierarchy was based not least on the qualitative difference between the heavenly and sublunary spheres, so also only the reduction of the subjects to the mere "number of heads" (as the conservatives of the nineteenth century expressed themselves with bitter irony) or to summable individuals eliminated all differences of rank from the world.

According to this analysis, the sense of our thesis should be understandable, conservati

vism was the reaction to the modern principle of sovereignty as well as to its ideological and socio-political side effects. It is only to be remembered once again that this reaction did not create a conservative theory *ex nihilo*, but for its part articulated itself ideologically <I through the rickgriff on the ideas of the *societas civilis* and <I through <lessen expedient editing or modification.

### 3. The struggle of the *societas civilis* against modern sovereignty

#### *a. The Nobility, the Staat and the Ambivalences of Conservatism*

The first section of this chapter briefly touched on the main ambivalences that characterize the historical nature of conservatism: theoretical adherence to the ideal of the *societas civilis*, i.e. Theoretical adherence to the ideal of *societas civilis*, i.e., to the autonomy of the *oikos* and to the hierarchical human relations associated with it, while at the same time attempting to make use of the more effective means of power of the modern state in order to achieve tactical goals or to secure strategic positions; and appeal to an eternal order of being, the reflection of which is the existing social order, while at the same time activism as soon as decisive action appears necessary and possible. To these fundamental ambivalences must soon be added a subordinate and formal one: the use of sacred or (somewhat spacer) clarion language in defense of the

The language of the time, in its conflation with the corresponding content, was originally opposed to the worldview and the legal conception of the *societas civilis*. If these ambivalences remain unmentioned and unexplained, then what was later called the transition of conservatism into reaction, or even some conservative positions (such as the evaluation of "feudalism" and the "Middle Ages") can hardly be understood in historical-concrete terms. Although the formal and substantive ambivalences of conservatism only emerge in full drama in the course of the liberal and democratic revolutions, they have existed from the very beginning and are not curiosities of intellectual history, but are rooted in the necessarily ambivalent attitude of the nobility toward modern sovereign statehood. This attitude can be described in general as follows. The nobility basically adhered to the legal conception of the *societas civilis*, but at the same time it had to fill the positions in the young state apparatus mainly from its own ranks and therefore identified itself with its fate in various ways. This process was inevitable precisely because the nobility was still by far the stronger or more united social group to which the lesser share in the distribution of the new offices and honors had to fall, and moreover because the nobility, which resisted the autonomization of the state, turned to the bearer and driver of this same autonomization, namely the absolutist prince, <I>by feudal feelings of loyalty. In a certain sense, the nobility is a victim of its own traditional strength and traditionalist attitude. It is at least partially reconciled to the ongoing dissolution of its basis of existence, i.e. the *societas civilis*, as long as it believes to have at least partial control over what in the long run should prove to be the vehicle of this same dissolution, namely the state. Even more: since the nobility - in view of the pre-state social reality certainly not unjustly - equates the existence of the *societas civilis* at all with its own rule, it now partly surrenders to the exchange, its, as will become clear later on, preliminary predominance in the newly arisen state can be interpreted as the maintenance of the rights of the old *societas civilis* itself, especially since the agrarian economic basis of the latter remained largely intact for a long time.

The relationship of the nobility to the emerging sovereign state varied from country to country, and its particular form significantly influenced the general physiognomy of the state in question; it is probably on the basis of this relationship that a typology of states can be drawn up. For the time being, however, we are not interested in the respective outcome of the game between nobility and state, but in the game itself in its fluctuations and paradoxes as well as in its constants. Throughout the pre-Revolutionary period, the demands of the nobility with regard to the occupation of state offices remained constant to the point of monotony, as they appear to us in the *Cahiers de Noblesse*, in the declarations of the Estates from several countries or, for example, in the programmatic statements of individual nobles with more general political ambitions.

The court and state chancellery of the prince, which gradually emerges, is a source of great confidence. It often consists of *hominibus novis* - and, as is often assumed, *novarum rerum cupidis* - and as such embodies the young state's claim to independence from the civil society as well as its essential opposition to the traditional hierarchy of the blood and thus to the traditional conception of law in general. The nobility, however, not only wanted to surround the prince exclusively and thus to have a direct influence on his decisions, but it also claimed all (important) state and church offices (sometimes even the administration of the cities), and furthermore it expected the subordination of the non-noble officials to the noble ones, which, of course, was tantamount to a subjugation of the revolutionary-egalitarian principle associated with the sovereign state and its biocracy by the traditional idea of hierarchy. The self-governing *oikos* remains the aristocracy's ideal, but the moment the young state apparatus puts visible limits on this self-government or withdraws its broad base, the countermove is usually not in the form of a blunt defense of traditional rule and way of life, but rather in the form of a claim to control (and this may mean objective approval) of that which threatens the traditional, i.e. the state apparatus. What the nobility loses in self-government, it seeks to make up for by conquering the new state offices; and if it holds on to its traditional, acquired and legitimate rights in a theoretically unaccommodating way, its practical concern, on the other hand, often consists in translating the unaccommodating in principle into tangible gains within the emerging state order. This tendency is strengthened in the light of the experience that an office secured social advancement for its holder even if he already belonged to the old nobility. For their part, the princes distributed state offices to nobles not only because they had to take the nobility into account, but also in order to play nobles off against each other and thus weaken the overall socio-political position of the nobility. Perhaps even more important is the fact that the prince, by distributing offices, did not simply compensate the nobility for the loss of traditional power.

z. The nobility, however, did not consolation, but rather confirmed and sealed this loss, by actually presenting the distribution of offices as a free act of its sovereignty. After all, in some cases the political subjugation of the nobility went hand in hand with the strengthening of its position within the state apparatus-30.

From this point of view, the observation of the considerable power of the nobility in the new state is not a refutation of the thesis that under the absolutist regime there would be

<sup>30</sup> On the contents of this paragraph, see Oestreich, *Geist*, 219ff; Gerhard, *Aufsätze*, 75ff; Hayden, *France*, 183ff; Petit, *Assemblée*, 217ff; Uhlhorn, *Solms*, 155 ff; Marcks, *Coligny*, 228 ff; Picot, *Histoire*, II, 273f., III, 208f., 319, 447 f., IV, 149 ff., 276; Aylmer, *King's Servants*, 256ff; Lieberich, *Landherren*, 95; Heinrich, *Adel*, f299.

The idea of the nobility as a legal-social rather than a political privilege reflects the separation between the state (in which all are equal) and society (within which inequality is possible or even natural).<sup>31</sup> But there is another aspect to the matter, which threatens to overshadow or undermine this new separation, which for the time being guarantees the sovereignty of the state. In return for their political subjugation and their (selfish) service to the state, the nobility is given their independence (albeit now somewhat limited) in the local circle of the *oiko*; thus they participate in the expansion of the state on the higher level, but on the condition that they are allowed to stand in the way of this same expansion on another level, which is considered subordinate for the time being. The ambivalence intensified as soon as the noble local self-administration took over state tasks, i.e. it functioned in terms of personnel and technology as before, but this time it acted and acted in the name of the state; in this way a compromise was found between the persisting organizational weakness of the young state apparatus, which could not yet grasp everything it wanted to grasp, and the nobility's claim to preserve its traditional prerogatives. From the point of view of today's ideal-typical classification and recording of phenomena,<sup>32</sup> this is admittedly a strange hermaphroditism, a grotesque blending of two fundamentally different directions. The state tries to absorb the noble-feudal one by entrusting it with state tasks, while the noble-feudal one wants to absorb the expansion of state power by making itself a vehicle for it in order to break off its revolutionary tip. If this succeeds, as it often has, the political subjugation of the nobility often becomes an empty word, and a condition arises in which the nobility may believe in the possibility of preserving its prerogatives even under conditions of modern statehood. This mixture of motives and tendencies can be studied in a phenomenon such as the sale of office, in which we are not interested here in the dispute between the nobility and the bourgeoisie that it provokes, but only in the conception of office on which it is based: although the office is inherently connected with the state, and it is also granted by the prince as the highest bearer of state power, it is at the same time regarded as an acquired right in the sense of the traditional conception of law, so that its holder can only be sure of his or her rights in the state.

<sup>31</sup> Thus Hintze, *Staat*, Ford49. (Robe, chap. I) cannot classify the absolutist policy toward the nobility so clearly; rather, it leaves a confusing impression. Nevertheless, the absolutists of the 17th century were already aware of the distinction between social prerogatives and the political subordination of the nobility; on Le Bret, for example, see See, *Idees*, 75.

<sup>32</sup> On this phenomenon in Austria in the nineteenth century 17.18., see Hintze, *Staat*, esp. 354,331, 327,325.



can even revolt against the state if he sees himself disadvantaged<sup>33</sup>. It was precisely these unpredictable circumstances that the Intendant and the Commissarius were supposed to put<sup>34</sup> an end to. The absolutist state, however, until its end, was not able to replace this confusion of rights, powers and types of rule by a unified administrative practice based on an overall concept; since the activity of its officials covered the whole country, but often had to stop at the local courts or police, it could not penetrate<sup>35</sup> deeply enough.

The (partial) survival of the *societas civilis* in the premodern state thus paradoxically facilitated the (partial) incorporation of the nobility into it, with the result that the nobility gradually became accustomed to viewing its own problems as (the) state's problems, namely to expect or demand their solution from the state and to make its respective attitude toward the state dependent on the manner of this solution. A glance at the reform plans of conservatives such as Fenelon or Saint-Simon, for example, shows that this is an attempt to put the power of absolutism at the service of a nobility which, in its present state, is admittedly no longer capable of asserting itself as the ruling upper class without administrative help. Ligeurs or frondeurs, therefore, these conservative reformers are only in a certain sense; Saint-Simon even displays "absolutist" sympathies insofar as he does not expect much from a revival of institutions such as the *Etats Generaux* and an absolute monarch surrounded by high noble advisors and acting according to their suggestions seems to<sup>36</sup> him a much more effective instrument for safeguarding the interests of the nobility. The prerogatives of the nobility thus do not appear to be anchored in an eternal-national but rather in an administrative order, although the ideological fictions of the *societas civilis* are not (entirely) eliminated or forgotten. The (early) tendency to secure noble prerogatives and noble rule through the administrative means of the absolutist state must be particularly emphasized because it contains the later turning of counter-revolutionary conservatism into reaction and dictatorship in nuce. Now, the nobility, when it gave in to this tendency, by no means felt that it would involve it in an insurmountable and possibly fatal contradiction between means and ends, not only because of the displacement of the problem by the effect of convenient rationalizations, which is common in similar cases, but also because of the fact that it was not a matter for the nobility.

<sup>33</sup> S. Mousnier's elaborations in: Aston (ed.), *Crisis*, 97 ff. Mousnier also already elaborates the ambivalent character of the court as a place of concentrated forestal power, on the one hand, and as an arena of status-aristocratic intrigue, on the other.

<sup>34</sup> Mousnier, *Venality*, 666f; cf. Bonney, *Pol. Change*, esp. ff. 29886.442,

<sup>35</sup> According to a formulation by Raumer, para. state, 70, 77. Cf. Gohring's description of France in the century, *Weg*, 18.26.

<sup>36</sup> In summary s. Gallouedec-Genuys, *Prince*, 194ff, and See, *Idees*, ff.241

because] its intertwining with the state apparatus or the court resulted in a redirection or reinterpretation of "feudal" values and behaviors in terms of the new realities. For example, the involvement of the absolutist state in the concerns of the nobility could be interpreted as a revival of the traditional deeper community of interests of the king (as the *primus* among the nobles) with his peers, just as in the past the submission of the nobility to the absolutist monarch was often facilitated by the effect of feudal feelings of loyalty. The multifaceted, historically and sociologically remarkable phenomenon of channeling "feudally" motivated energy into the path broken by the state, as well as the resulting re-functioning of this same energy, can be studied, among other things, in the mentality of that part of the nobility which constituted the bulk and the backbone of the officer corps, namely in the cavalry. The modern cavalry had to cope with war tasks, which were not at all the same as those of the knighthood, but resulted from the modern combat logic dictated by the role of the infantry, but this did not prevent the noble cavalry officers from living for centuries with the idea that they would continue the<sup>37</sup> martial and at the same time moral traditions of the knighthood. The general ambivalence of the nobility's relationship to the state was also evident here, however, in the fact that not only were modern institutions imbued with a "feudal" spirit, but also the spirit emanating from the modern institutions often permeated and helped to shape those areas of life that still remained<sup>38</sup> outside the (immediate) grasp of the state as continuing pillars of the *societas civilis*.

The integration of (important parts of) the nobility with the emerging state apparatus, which was the objective bearer of a new hierarchy of values and attitude to life, brought about a secularization of the nobility's worldview, albeit often only indirectly and unfinished, so that the Christian background of the knightly way of life and the doctrine of virtue gradually faded away. The same effect was ultimately achieved by the opposition between the nobility and the Catholic Church, which came to light in the 16th century as a result of the redistribution of ecclesiastical property during the Reformation, even though] here the noble (and princely) claims were initially not sacred, but Lutheran or Calvinist. The antagonism between the absolutist monarchy and the nobility has its

<sup>37</sup> S. Wohlfeil, *Adel*, esp. 214ff., 224,227.

<sup>38</sup> One - admittedly extreme - example of this is the preul3ic transfer of the military habitus to the estate administration. On this and on the general socio-historical framework in which it became possible, see Biisch, *Militarsystem*, esp. 71 ff, 161 ff. On the rapprochement of bureaucracy and nobility in Prussia, despite continuing differences in attitude to life and values, see Rosenberg, *Bureaucracy*, 116 ff, esp. 121 f. On the social preponderance of the nobility in the German armies of the 18th century, see Demeter, *Offizierkorps*, chap. I. Cf. Speier, *Militarism*, esp. ff.309



On the contrary, this cooperation facilitated at least a preliminary alleviation of that antagonism, which was welcome to all concerned, even if the distribution of the spoils fanned the flames of new complaints and struggles. Still in the 13th and 14th centuries, the stancle had made common cause with the national confederacy against the papal claim to the temporalities of the native church, since the nobility felt<sup>39</sup> displaced by the "extranei" governors of the pope and prevented from enjoying the ecclesiastical priory. The economic and political crises that afflicted the French nobility in the 16th century, for example, caused some of them to be forced to leave the country. The economic and political crisis that afflicted the French aristocracy in the 16th century, for example, gave rise to and strengthened anticlerical tendencies in its ranks, which were articulated theologically in the form of sympathies for Lutheranism or Calvinism and socially in the demand for confiscation of church property.<sup>40</sup> Not only in England, but also in other countries, the sacralization of ecclesiastical property (also) benefited the nobility and was accompanied by a considerable decline in the political influence of the clergy.<sup>41</sup> Now the sovereign who confiscated ecclesiastical property could invoke Luther's doctrine of the common good, which, however, could not justify similar claims on the part of the nobility, since concern for the general welfare of the country was not (directly) his thing; thus, in some cases, it could only be achieved through acts of violence and church robbery.

The nobility was able to share<sup>42</sup> the benefits of secularization with the sovereign prince to some extent. After all, the fear of the first power seems never to have been so great that it could have led to a consistent noble defense of ecclesiastical or papal political or property rights; in the 16th century as well as at the beginning of the 19th, the nobility sacrificed basic positions of the *societas civilis* to its short-term interests. And even extreme noble enemies of absolutism advocated the influx of the proceeds from the sale of ecclesiastical titles (whether to nobles or not) into the princely treasury, hoping that the financial self-sufficiency of the prince, secured in the long term, would reduce the taxation of the nobility to the level of the princely treasury.

Making duration superfluous<sup>43</sup> - In times of need, of course, the nobility turned to help

However, despite the (close) personal interdependence of the two *estancels*, this was not given without further ado<sup>44</sup>; only the commonality of tangible interests could lead to joint action against absolutist policies.

<sup>39</sup> Wieruszowski, *Vom Imperium*, ff201. How burning the problem was still in the century, 16.

shows the use made by Francis I of the Concordat of Bologna (1516), see Gem, *Social origins*, esp. 381.

<sup>40</sup> Salmon, *Crisis*, 123et seq.

<sup>41</sup> Ober Preullen e. g. s. Heinrich, Adel, 273(, and Hall, *Kurm. Stancle*, 11, 176. On the English development, see section of this 5chapter.

<sup>42</sup> Lehnert, *Reform. u. Kirchengut*, ff130

<sup>43</sup> Sturmberger, *Tschernembl*347,, 355,360.

<sup>5</sup>The psychological and ideological alienation of nobility and clergy took in some cases, when the Catholic Church, in order to better protect its own interests against Protestantism, for example, gave its support to absolutist monarchs under certain circumstances, the open forms that we encounter, for example, in Saint-Simon or Boulainvilliers, who did not want to<sup>46</sup> know anything about the clergy's own political rights.<sup>4</sup> Above all, Boulainvilliers' freethinking symbolizes very clearly the inner detachment of numerous nobles from the Christian-ecclesiastical culture, precisely in the parallel attempt to formulate anti-absolutist-conservative ideas in a somewhat coherent way.

However, positions such as Boulainvilliers's cannot be understood only from the contrast between nobility and church, which is conditioned in one way or another, but presuppose an additional secularization factor. This is modern education, which in the course of the 16th and 17th centuries made its way into the ranks of the nobility. The reason why the nobility wants to acquire it is due to its desire to assert itself socially in the conditions created by the development of the modern state. At least the most astute and agile nobles soon realized that the "noble" and "virtuous" in the old sense had to be educated in order to serve the state or "his king" as ambassadors, advisors and advisers,

Governor, judge or officer to be able to<sup>4</sup> serve-<sup>7</sup> This insight was helped by

They were also confronted with the ever-increasing competition from the *homines novi*, who very often came from the bourgeoisie. If on the one hand the nobility, varying traditional values, complains about the suppression of courage and virtue by cunning or money, on the other hand it is more and more openly acknowledged in its circles that its members must educate themselves in order to remain competitive; it even happens that nobles, in their fight against the venality of office, use meritocratic arguments and no longer emphasize<sup>48</sup> their origin, but rather their education and other abilities against the richer non-noble candidates for state office. The lively life at court has also

The aristocracy is exposed to competition from non-aristocrats and, because it is the

The development of individual abilities of all kinds demanded<sup>49</sup> and encouraged meritocratic thinking among the nobility as well. The secular education, which was supposed to qualify the nobility for the civil service, was basically juridical in character, but at the same time humanistic, since Latin was both a style of the state life of the time and a bridge to the knowledge of ancient literature and philosophy, which had been rediscovered in the meantime.

<sup>45</sup> For example, on the eve of the French Revolution, see Heinrichs, *Ideol. d. Klerus*, esp. 48ff, ff, 111136ff.

<sup>46</sup> Evidence in Barzun, *French Race*, 153;144, Boulainvilliers, *Histoire*, 202ff111,. Cf. below Note u64. 65.

<sup>47</sup> Hexter, *Education*, 64.

<sup>48</sup> *Die deutsche Literatur des 17. Jahrhunderts*, 1610.

The nobles had the opportunity to learn modern foreign languages at foreign universities and thus to come into contact with secular Renaissance literature. Noblemen who were interested in new agricultural methods had to have<sup>50</sup> knowledge of natural sciences. Traditional or reformed religiosity did not fall by the wayside in all this, but the nobility was now not or not exclusively dependent on theological terminology as soon as they wanted to express their socio-political concerns. This, we repeat, was decisive for the treatment of the ideas of the *societas civilis* in the sense of conservative needs from the 16th to the 19th century.

To round off our schematic overview of the relations of the nobility to the nascent modern state in their significance for the shaping of modern conservatism, it should be noted that the occupation of most and, as a rule, also the most important state offices by the nobility was not able to give him a final and complete reassurance. It certainly helped to keep his reactions in check, to arouse and nurture his hopes, and to secularize his worldview, but on the other hand it made him realize that the inheritance was not sufficient to secure his social supremacy, and that this latter very often had to be fought for, especially as the size and composition of the nobility became more and more a matter of princely policy. The result, as is well known, was the at least long-term opening of the ranks of the nobility to non-nobles and the proliferation of the nobility, which led to the impoverishment of many among them. In the last decades, and in the context of an ideologically motivated attempt to protect<sup>51</sup> the status-aristocratic past by force, the view has been repeatedly put forward, mainly with regard to the French pre-revolutionary development, that the social mobility to be found within the *ancien regime* implies the impossibility of an aristocratic reaction as a negative cause of the revolution<sup>52</sup>. But this is short-sighted in two respects.

<sup>50</sup> Marcks, Coligny, 208et seq.; Bruckner,

Staatswiss., 102et seq.; Brunner, New Directions, et285 seq;

Sturmberger, Tschernembl, 32 ff, 254ff; Krollmann (ed.), Selbstbiographie, 2 ff; Thomson, Life, 262 ff; Lee, Ideal, 85 ff; Walser, Span. Central, 194f.; Brunner, Adliges Landleben, 139ff.

<sup>51</sup> More on this in section d3 of this chapter.

<sup>52</sup> Thus, for example, Goodwin (Social Structure, esp. 358- 361), who rejected Palmer's thesis of an aristocratic reaction even before 1789. Palmer, however, does not attribute the aristocratic reaction to the strictness and irrevocable separation of the *estancle* from each other, but on the contrary to the fact that there were enough points of contact between them to cause difficulties (Zeitalter, 97). Gruder also wants to prove that society in the *ancien regime* was by no means "closed and fixed" and that *therefore there* can be no question of an aristocratic reaction (Intendants, 180, 205 f.). In doing so, she refers to the doubling of the number of nobles between 1715 and as well as 1789, to the increasing share of *novi homines* among the intendants in the period before 1789

First, the fact of social mobility under the *ancien regime* (we will leave aside the question of its actual extent) does not imply *eo ipso* the absence of an "aristocratic reaction"; it may at least mean that the aristocratic reaction was simply not successful. Second, however, this aristocratic reaction was caused precisely by the fact that the existing social mobility further threatened the position of the already established nobility, which was struggling to maintain its exclusivity and prerogatives; the new nobles were therefore perceived not as a welcome reinforcement but, on the contrary, as competitors in the distribution of the increasingly modest gifts of the state or the court. While *mesalliances* were tacitly tolerated to save nobles from bankruptcy, on the other hand, the nobility remained fundamentally opposed to any spiral expansion of its ranks; there was no lack of<sup>53</sup> complaining and warning voices at all. Even the (occasional) admission of new members to the nobility did not create a permanent relief and a lasting social equilibrium, since the border between nobles and non-nobles became dense again after each new ennoblement; thus, individuals could cross this border, but only in order to remind those who remained behind it of the existence of this border once again and even more drastically. In their totality and interaction, these factors create a rather unstable and uncertain situation, in which the established live with the fear of having to share their prerogatives with newcomers, while the upwardly mobile, faced with the sharpness of the social demarcation lines, fear for the realization of their ambitions until the last moment. It is precisely the fact of social mobility in the parallel persistence of class privileges and corresponding behaviors that leads to tension here - to reaction as well as counter-reaction.

Conservative thought takes shape on all these partly overlapping, partly intersecting social and historical levels that we have outlined above. Its aspects and nuances, its variations and fluctuations, do not form intellectual-historical characteristics or self

the ideational entities that develop in the course of time, but correspond to the manifold and

The widely ramified relationship of the nobility to the emerging state and its increasingly loud claim to sovereignty; the internal division of the nobility into

(168ff., 175, 177f., 188 f. ). The significance of the new *annoblissements* with regard to a profound transformation of the nobility is put into perspective considerably - and not without some good reasons - by Reinhard, Elite, 29f.; cf. The admission of *hommes nouveaux* into the ranks of the parliamentary aristocracy toward the end of the *ancien regime* is noted by Egret (Arist. Parlem., *passim*). Nevertheless, this did not mean a permanently open opportunity for advancement. In *iibrigen*, the fusion of robe and epee had already taken place at that time, see Bluche, Magistrats, esp. ff303. , f371., ff380. , and Ford, Robe, ch. XI.

<sup>53</sup> For evidence, see Carre, Noblesse, 154-156. On the *mesalliances*, see S. 55.

The fact that the state was often divided into strata and groups fighting each other (a division that constitutes an important aspect of the social-historical development, although it could not be taken into account in our schematic reconstruction) made this relationship all the more complicated and contradictory. The dual character of the absolutist state, i.e. the fact that by its very nature it had to eat the local living germs of the *societas civilis*, first and foremost the *oikos*, largely intact, although it entangled them in a new kind of network of rule, explains the relative lukewarmness of conservative thought in its anti-absolutist form: it was not yet a question of all or nothing, as it was after 1789. The difference in intensity, however, does not change the identity of the content. Even before 1789, the core ideas of the legal conception of the *societas civilis* were put at the service of the conservative cause, but they were modified and at the same time secularized to the extent that the nobility, on the one hand, fought for the survival of the *societas civilis*, while on the other hand, sometimes at the expense of the Church, it linked its destiny to the state. In other words, the nobility is both outside and inside the state, and to the extent that it is outside it, it professes the ideology of the *societas civilis*, which it transforms and secularizes to the extent that it is inside the state and under the influence of the mode of behavior and thought that ultimately emanates from it. The political possibilities of action that are possible in this spectrum range from adaptation and the demand for expedient reform in a conservative sense to revolt and conservative reaction.

#### *b. Legitimate and illegitimate absolutism*

The effective persistence of the legal conception of the *societas civilis* into the 18. and

19. The development of the city into the twentieth century is illustrated, among other things, by the recurring appointment of conservators.

The principle that the king is the supreme judge, according to the nature of his office<sup>3</sup>, is also documented in the case studies. As we know<sup>45</sup>, this principle implied that the king - precisely in his capacity as the *lex animata* - did not create law arbitrarily,

Thus, whoever, after the elaborate formulation of the modern idea of sovereignty around the middle of the sixteenth century, attached particular importance to this principle, usually wanted to indicate his opposition to the voluntaristic conception of law and the related redefinition of the nature and function of the monarchy. This opposition, of course, could be as much of Germanic as of ancient Aristotelian and scholastic inspiration; the continuity of the motifs of thought can therefore also be seen in the use of the principle.

<sup>54</sup> S. section of this 2chapter.

The same principle was also applied by the scholastics, who, at the same time, directly followed Thomas, when Molina characteristically wrote that the assumption that kings sought to increase their power over their subjects by force was, in doubt, much more probable than the assumption that the subjects sought to limit the power granted to the kings<sup>55</sup>. Soto, for example, describes the king as the highest judge, and he directly contrasts this characteristic of his with modern sovereignty when he remarks that the judge-king could not pardon a criminal because he himself was *legibus solutus*, but only with the goal of promoting the *bonum publicum*, to which, by the way, all his actions should be<sup>56</sup> bound.

Mariana also considers the *ius dicendum* (besides the *bellum gerendum* and the *magistratus creandi*) for fundamental prerogatives of the king<sup>57</sup>, which he understood to mean that the king may judge on the basis of existing ancient law and adapt or interpret it appropriately, but not break it;

*moris patrii institutorumque reverentia* must in any case guide his conduct, and, since he is *legibus solutus non est*, he is *solutus* at all only in the measure in which he is urgent tasks or to<sup>58</sup> avert a momentary emergency.

As we shall see, this distinction, which goes back to medieval ideas, is at the beginning of the opposition between legitimate and illegitimate absolutism. The fact that the king is entitled to the *ius dicendum* without further ado does not represent a restriction in Mariana's eyes, but on the contrary a confirmation of his demand for the submission of the king to customary law. In contrast to the more or less apolitical appeal of other spatulastics to rather ethereal natural law

Marianajene's right is anchored in the Spanish Cortes<sup>59</sup>, the great civic assemblies, which, in his opinion, are also the

The king's own political ideal, which he calls "aristocracy," is to<sup>60</sup> be put into practice.

Mariana formulated his ideal in a compromising way, although he was aware of the already advanced decay of civil and aristocratic institutions. Other scholars - and most of them - tended to take into account the actual growth of absolutist power and to grant it legislative and administrative rights, in many cases already existing in practice, while at the same time trying to preserve<sup>61</sup> the traditional conceptual framework. The extent to which each was prepared to take on the new powers created by the rise of the

<sup>55</sup> De just., - II, =23 I, B118.

<sup>56</sup> De just., V, =4,4 f r158. (above). Similar to Brutus, Vindiciae, III = 150ff.

<sup>57</sup> De rege, I=8 S. .92

<sup>58</sup> De rege, I, =9 S. 101,99.

<sup>59</sup> Hamilton, Pol. Thought, 41.

<sup>60</sup> De rege, I esp8., p. f88, f96, and I, =2 p. f33

<sup>61</sup> Cf. Sanchez Agesta, Concepto de! Estado, esp. 135ff, ff.149

The question of how far royal power came from God and how far it came from the "people", as well as which (inalienable) rights the "people" reserved for themselves after they had delegated or conceded<sup>62</sup> power to the monarchy to this or that extent, was indicated in the controversies of the 16th and 17th centuries. Since we want to illustrate here the persistence of the legal conception of the *societas civilis* first of all by examples from the Catholic sphere, it should be added immediately that the confessional struggle, which at that time was already at its peak, very often influenced the attitude to the question that interests us here. The tendency of the nobility, especially in the sixteenth century, to move closer to Protestantism of one kind or another in their opposition to Catholic monarchs, had to induce Catholic clergy, who were otherwise attached to the cause of the *societas civilis* in its ecclesiastical version, to ally themselves with these monarchs according to the possibilities of the concrete situation. The Edict of Restitution issued by Emperor Ferdinand II in 1629 clearly shows what these alliances were good for. Such clergymen handled the scholastic social-theoretical scheme, which was sufficiently flexible, in such a way that they could theoretically justify the tactically expedient strengthening of the monarchy, but without explicitly abandoning fundamental anti-absolutist positions that had to be kept in reserve for difficult times. The confessor of Maximilian of Bavaria, the Jesuit Contzen, represents paradigmatically this tendency. Although he generally follows the traditional scholastic conception of the origin of state power and does not accept a power of rule given directly by God, he at the same time associates the prince with God as far as possible, recognizes his

territorial authority and legislative competence, denies the resistance and powerfully degrades the role of the stancle. On the other hand, however, he cannot admit that the prince is *legibus solutus*, but continues to derive the positive law from the divine-natir ius, with all the enhancement of its significance, and binds the prince to a series of moral commandments, which partly follow the scholastic

politics, partly from humanistic literature-<sup>63</sup>

In addition, he calls for,

that not exclusively or primarily noblemen, but capable men, should<sup>64</sup> be in charge of the court. In this demand there is perhaps the ambition of self-made men, as the Jesuits often were, to jump over the given barriers of rank, although theoretically they had to work for the maintenance of the same; but certainly in it there is the

<sup>62</sup> 0-about these controversies, see section b4 of this chapter.

<sup>63</sup> Seils, *Staatslehre*, 72 et seq. , 123ff. The conservative-harmonizing function of the humanitarian ideal of the state has been very well elaborated by Hinrichs, *Fiirstenlehre*, esp. 120f., 126 f., 328f.

<sup>64</sup> Seils, *Staatslehre*, Already 135. Ribadaneira, *Tratado*, II, =6 esp. p. f246

The conflict between the nobility and the Church is thus brought back to the previous section. This brings us back to the conflict between the nobility and the church, which was mentioned in the previous section. It is not a matter of random statements of an individual. Mariana, for example, demands the free access of all "virtuous" to the high offices and, in addition, is concerned about the long-term safeguarding of the Church's independence, since, as he says, the nobility could<sup>65</sup> turn to heresy at any time and ignite helium intestinum.

Although confessional views have had different effects on the reformulation and redefinition of the legal conception of the *societas civilis* since the nineteenth century, the conservative structures of thought have remained more or less stable<sup>16</sup>. Although confessional views have had different effects on the reformulation and reformatting of the *societas civilis* since the nineteenth century, the conservative structures of thought have remained more or less stable. They were not (exclusively) theological-scholastic, but (also and above all) of ancient and Germanic origin, and thus they proved to be above the religious dispute in the paradoxical sense that they could and did<sup>66</sup> serve all religious parties according to the needs of the concrete polemical constellation; it was only in the period after the French Revolution that a connection - by no means universally accepted - between "genuine" conservatism and Catholicism was assumed, with a simultaneous rejection of the alleged revolutionary spirit of Protestantism. The fusion of the theological-scholastic version of the *societas civilis*'s conception of law with the iibrigen was facilitated, moreover, not only by the advance of secularization, but also by the fact that all of the aforementioned versions simultaneously came under the same pressure, namely to accommodate the new power-political reality and to redirect the energy of rising also lutism into conservative objectives. The phano

We do not only encounter this in the spatulastics. the Damme against the Protestant The main reason for this is not the desire to establish a confessional tide, but already the conservatives of the 16th century, who were more interested in the social than in the confessional. Within the framework of Seyssel's harmonizing construction, a far-reaching recognition of the inviolability and de facto power of the confederacy goes hand in hand with the demand for the establishment of the confession. The demand for binding them to the three traditional "freins" of police, justice

and religion, whereby the divine empowerment of the king primarily concerns his capacity as judge, who has to<sup>67</sup> uphold the *justitia distributiva* together with all the libertes, privileges and louables costumes that concretize it; this construction is taken up again by Du Haillan in 1570<sup>68</sup>, while Coquille, who longs just as much as Du Haillan for the good old days before Louis XI, and in doing so, the principles of the sociecas' conception of law, also takes up the conception of the law.

<sup>65</sup> De rege, III , u2. I, (10= p. 113).

<sup>66</sup> See section 3c below.

<sup>67</sup> Monarchie de France, I, 8- u11. II, =15 p. ff.1131, , 17150.

<sup>68</sup> Caprariis, *Propaganda*, 310ff.

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civilis in a detailed and interesting recapitulation, does not want to deny<sup>69</sup> the special rights and competences of the majeste royale. For Coquille, however, it is clear that the king is basically a judge who cannot change the law<sup>70</sup>; his special powers must therefore develop within a given legal framework and serve precisely to defend traditional law in exceptional circumstances. The monarchomachic position, that the king is simply supremus regni officarius, curator or administrator Reipubli, amounts to the same thing.

cae, legibus restrictus and not solutus-<sup>71</sup> The Monarchomachs were understood

Although the latter were not very inclined to pay for the king's special powers in detail, even the acceptance of such powers hardly changed the final result of conservative deliberations. This was evident at the time of the Fronde, whose (rudimentary and hardly original) political ideology challenged the position of the meanwhile admittedly further strengthened Konigtum much less fundamentally than was the case with the monarchomachs, but on the other hand was based overall on the principle that the will of the sovereign was not eo ipso the law<sup>72</sup>. Joly recalls that kings were originally judges, thereby historically supporting his view that their pouvoir was borne et fini<sup>73</sup>. Writers of pamphlets emphasize that even if the king is above the positive law, he remains<sup>74</sup> at the same time subject to natural divine laws: in this ambivalent position they unconsciously summarize the ambivalent attitude of the nobility towards the modern state. Following this political tradition, Fenelon also calls the king the first judge and joi vivante<sup>75</sup>, in order to draw from<sup>76</sup> this the demand for the submission of the king to the law represented and defended by himself-although Fenelon grants the king legislative functions, he wants to see in him primarily the defender of the law, especially since good law is actually the work of God and not an invention de l'esprit humain. He tries to eliminate the contradiction by assuming that there are two kinds of laws, i.e. those that are eternally valid, i.e. divine, and those that come into being for the purpose of maintaining order in the state through the action of the king<sup>77</sup>. Sornit seems to have understood both the existence of the legal conception of the societas civilis and the pragma-

<sup>69</sup> Lemaire, Lois, 145 ff Various aspects of Coquille's conservative outlook are discussed in the section of 4. this chapter.

<sup>70</sup> Institutions, II, =2 pp. 2.

<sup>71</sup> Evidence in Landmann, Souveranetatsbegriff, 23f.

<sup>72</sup> Doolin, Fronde, xii.

<sup>73</sup> See, Idees, 110, 112.

<sup>74</sup> Doolin, Fronde, 114; Moreau, Bibliography, I, 339.

<sup>75</sup> Examen de Consc. sur Jes Devoirs de Royaute, I, § VII = OC, VII, 86.

<sup>76</sup> Dial. des Mores, XVII = OC, VI, 257; el. Aventures de Tel, XVII u. XVIII = OC, VI, 547, 561.

<sup>77</sup> Gallouedec-Genuys, Prince, ff158

This ensures that the functions actually exercised by the King are taken into account in an appropriate manner.

For centuries, such arguments were used to oppose voluntaristic interventions in the societas civilis. Just over a year before the outbreak of the French Revolution, the Parisian parliament opposed the royal reform plans with the following thesis: "Le Roi n' a point de volonte; la Joi est faite, elle doit decider; ii est le premier juge"<sup>78</sup>. In this sparse, but classically formulated

Recapitulation of the legal conception of the societas civilis culminates a whole series of

similar statements made during the French constitutional conflict of the four or five decades before 1789. One aspect of the anti-absolutist argumentation put forward at that time deserves our special attention here. It is by no means denied that the king possesses the universal and indivisible legislative power or that his autorite souveraine is<sup>79</sup> generally full and indivisible. On the other hand, this fundamental assumption does not prevent the opponents of absolutism from making the validity of royal laws dependent on the approval of the "people," who participate equally in the formation of the lois; The laws express the royal sovereignty, but at the same time they are the free voice of the nation, because "the King, the State and the Joi form a whole that is inseparable," from which it follows that the laws are not only the work but also the condition and the basis of the royal power, which resides<sup>80</sup> precisely in the observance of the laws. It is difficult to avoid the impression that these statements are contradictory in themselves, since it is not easy to see how a legislator, whose sovereignty even deserves the predicates "vol!" and "indivisible," can at the same time be subject to the will of the "people. The paradox, however, dissolves if we simply forget the modern concept of sovereignty and come to the conclusion that here new words are used to outline an old state of affairs, whereby their radical point can be broken off precisely on the detour of their unobjectionable or "innocent" use. Sovereign" becomes

In other words, the king is mentioned here in all tranquility, because it is considered unthinkable that he could be sovereign in the modern sense. The laws which he makes, therefore, do not affect the traditional distribution of socio-political power in the state, but are intended to confirm it or at the most to adapt it to new circumstances and generally recognized needs, so that they may be basically sure of the approval of the principal beneficiaries of that distribution; this is the meaning of the participation of the "people" in legislation. Precisely because the

<sup>78</sup> Remontrance of 11th-13th = 4.1788 Flammermont, III, 740.

<sup>79</sup> See, for example, Remontrance of 29 May = 1759 Flammermont, II, 184; cf. the numerous references in Bickart, Parlements, ff.70

<sup>80</sup> See, for example, the remonstrances of 27. 9.4.1753, 11.1755, 8.22. and 1756 = 24.6.1763 Flammermont, I, 608; II, 35, 146, 137, 342.

If the modern idea of sovereignty is not in question at all, this cooperation (which actually does not concern the procedure so much as the objective) is considered self-evident, which excludes a modern separation of powers in advance. For, if the parliaments knew and accepted the modern idea of sovereignty, they would have had to claim it for themselves and could not leave it to a hostile absolutist king; in that case, however, the parliament would be the legislature and the king the executive. Thus, paradoxically but logically, the king remains involved in the legislative power (in the sense of creating laws which, according to Fenelon's quoted expression, simply concern *ordre* and not law as the epitome of the existing socio-political relations) precisely because the modern sovereignty is excluded without further ado, which means the end of the aforementioned collaboration of king and "people" in favor of one side or the other and implies, moreover, that the legislative power can create laws which <even turn the existing law upside down. Thus, it is precisely in their opposition to absolutism that the defenders of the *societas civilis* remain faithful to the congethhood as they conceive it.

The ambivalent development, characterized on the one hand by the attempt to fundamentally bind the king to the judicial function and thus to the legal conception of the *societas civilis*, and on the other hand by the compulsion to take into account the new power-political reality that had arisen with the rise of absolutism, can be traced conceptually by the use of "abso lute" and "sovereign. The starting point is the original conception of the *societas civilis* of the sense in which it was reasonable to speak of the absoluteness of the sovereignty. According to this, the king's powers are limited, but within the given limits they remain unrestricted, i.e. absolute. This means that the king's power is absolute within the scope of his competences, but they are defined in the spirit of the general conception of law of the *societas civilis* and therefore they concern judicial and administrative as well as martial (according to aufien) and order-creating or -maintaining (in Inn.) powers. -<sup>1</sup>From the point of view of the Aristotelian opposition between king and tyrant, which was promptly received and disseminated in the Middle Ages, it can be said that the king can only be absolute in the sense of being king<sup>82</sup>, and that he becomes a tyrant precisely because he tries to act absolutely within the firmly defined area of his royal powers.<sup>8</sup> Thus thought

z. For example, in the Spain of the 16th J h. s Belluga, when he knew the king absoluta potestas zuer, without thereby the traditional privileges of the nobility to see<sup>83</sup> endangered,

<sup>81</sup> Mcilwain, Growth, esp. ff.364

<sup>82</sup> Jaszi-Lewis, Against the Tyrant, 21f.; cf. o. Ar,m. 13.

<sup>83</sup> Sanchez Agesta, Concepto del Estado, f96.

and a little later Suarez, who described the<sup>84</sup> royal sovereignty as *suprema in suo ordine*, that is, as absolute within its limits. That the king was absolute in this relative sense was admitted of course also by those who saw<sup>85</sup> in him the highest judge. In 17th century England, too, the word "abso lute" is used in the context of the traditional opposition between king and tyrant; it thus serves as an opposite term to "seigneurial" or "signori", which already with Bodin referred to<sup>86</sup> "tyrannical" rule. To the extent that the use of "absolute" to designate modern sovereign rule has accumulated<sup>87</sup>, it must be argued on the conservative side that sovereignty should not be expressed in "absolute" terms, but that *imperium* means a legal ducalia with a limited right of exercise<sup>88</sup>. The traditional use of

Nevertheless, the word "absolute" does not die away at all. It was meant to imply to the king that in times of need he would have absolute power anyway, with the approval of the people, so that he would not have to become absolute in the bad (new) sense in order to fulfill his high duties. Such arguments, made for example during the Fronde<sup>89</sup>, were defensive in the sense that they implied the forced recognition of the already achieved power of absolutism. Bossuet's position remained equally defensive, although here the front line was comparatively more advanced. The statement already made that his absolutism was different from Hobbesian, for example, and meant rather an accommodation with the *de facto* power of the Konigtum for the purpose of <lessen taming in the sense of the higher gotdich-nat iirlichen right<sup>90</sup>, is confirmed by the fact that Bossuet placed the traditional distinction between absolute and willkiirliche rule in the center of his politics.

<sup>84</sup> Def. fid., 1-2.3,5,

<sup>85</sup> Thus Seyssel, s. Church, Const. Thought, ff22

<sup>86</sup> Bodin, Six livres (1583), Also243. während der Fronde werden „despotique" und Moreau (ed.), Mazarinades, I, 387, cf. 400. On the opposition of pccestas absoluta and pocescas ordinaria in England (and on the continent), see Oakley, Jacobite Pol. Theo., esp. 329ff Smith wanted the "absolute power of a king (1taul3amA£ia)," which he distinguished from "tyranny," only in times of war.

apply !assen: „in time of peace, the same is verie dangerous" (Rep. Ang!., I, = 8p. 7).

<sup>87</sup> Examples in Thuau, Raison, ff;392 cf. Petersohn, Fiirstenmacht, 59, f.80,175,181

<sup>88</sup> Back, Duke, f184.

<sup>89</sup> Doolin,<sup>9</sup> Fronde, 64 f. Kossmann (Fronde, 17) fails to see that monarchs and noble conservatives mean two quite different things when they speak of absolute kingship, and therefore concludes that both sides basically share the same constitutional principles. Likewise, he fails to recognize the quite different meaning of the divine right for each of the two fighting parties (see below in this section). However, the Frondeurs can also use the new sense of "absolute" ("la puissance absolu e doit estre reiettee," Moreau (ed. ), Mazarinades, II, 464), just as Richelieu's opponents had previously accused him of striving for "pouvoir absolu" or "puissance absolue" (see Bailey, Writers, note419, 128).

<sup>90</sup> See the good analysis by Lemaire, Lois, 181ff.

where "absolute" means as much as: bound to<sup>91</sup> God and to the law. It is significant that a conservative like Fenelon, who was much less able than Bossuet to come to terms with the de facto power of the Konigtum, resorts to the same distinction. If pouvoir arbitraire means nothing else but

If the king is an expression of a volonté despotique, then pouvoir absolu must simply be understood as a puissance qui *juge* en d ern ier ressort<sup>92</sup>. Absolute in the good old sense is therefore the king already in his capacity as the highest judge.

Similarly, the usage of the terms "sovereign" and "sovereignty" has developed. It was natural to give free rein to one's displeasure with the declarations and deeds of absolutism in pejorative statements about the (modern) concept of sovereignty, that is, to equate it with tyranny per se, as Prussian nobles did<sup>93</sup> at the time of the Great Electorate. In very many cases, however, it seemed tactically more clever to load the term, which had become current and common anyway, with traditional content and thus to serve the old cause with modern weapons. Already in the early days, terms such as "maiestas," which were used as synonyms of "sovereignty," were used exclusively for "good" and "good".

The "just" monarch<sup>94</sup>, and during the front was sovereign.

repeatedly and purposefully equated with the preservation of traditional law; thus an anonymous person wrote: "La souverainite de nos Rois est de faire justice . . . La souverainite est absolue, lorsqu'il 'sagit de l'execution de la Joi"...<sup>95</sup>. The same This tactic was generally followed by the Parisian parliament in the 18th century. The "souverainite" was described as le plus ferme appui de la liberte of the subjects, since it was subject to the lois fondamentales and therefore virtually opposed to despotism%. The classical opposition of king and tyrant is thus always in the background<sup>97</sup>. Sometimes, in turn, the term "sovereign" was deprived of its absolutist momentum by being used neutrally, i.e., as a terminus technicus, simply to designate the king as such, who, of course, after

<sup>91</sup> Politique, VIII, Art. 2, Prop. = IOC, IX, 318.

<sup>92</sup> Essai philos. sur le gouvern. civil, V = OC, VII, 110; blocked by me.

<sup>93</sup> See the reports of Schwerin from 9.8 and 2. 10. 1661 = Urkunden und Actensticke, XV, 552, 596. On the contrary, Döbnersinsy advised the Elector to consolidate his "sovereignty" (letter of 2. 8.=1662 XV, 738).733,736.

<sup>94</sup> Sanchez Agesta, Concepto de! Estado, 81ff, esp 88.

<sup>95</sup> Veritables Maximes (1652), cf. Gohring, Weg, 109f Cf. Doolin, Fronde, 136f.

<sup>96</sup> Remontrance of 25. 1. 1753 = Flammermont, I, 523f Cf. Bickart, Parlements, f Boulainvilliers 23,29also called the king "souverain absolu" in the old sense, Histoire, I, 100.

<sup>97</sup> It was also commonplace during the Fronde (Moreau (ed.), Mazarinades, I, 387f) and had a significant influence on Montesquieu's thought, as Carcassone has shown (Montesquieu, 65ff.). It is noteworthy that Montesquieu's tripartite division of constitutional forms differs from Aristotle's precisely in that it foregrounds the opposition of monarchy and despotism.

The conservative understanding of sovereignty was<sup>98</sup> that it was fully subject to the law. Finally, there were also particular reasons that blurred thinking and language with regard to sovereignty. In Germany, one such reason was the structure of the empire, as a result of which the imperial estates had to assert the legal view of the societas civilis against the emperor and at the same time demand obedience from their own subjects on the basis of the modern principle of sovereignty; therefore, the estates were able to use precisely those arguments against their own sovereigns that the latter were in the habit of<sup>99</sup> presenting against the imperial claims.

The controversy over the meaning of the divine right is characterized by the same opposing points of view that condition the ambivalence of the use of the terms "absolute" and "sovereign" or "sovereignty". As is well known, the newer absolutist divine sovereignty was an attempt to reinterpret traditionally Christian motifs of the legal conception of the societas civilis in such a way that they could be<sup>100</sup> placed in the service of the modern state and thus in that of sacularization in general-an attempt which, in view of the still unbroken power of both Christianity and that legal conception, was not only factually necessary and tactically expedient, but also psychologically relieving for the innovators. Through the

The monarch's authority was reduced to a minimum.

<sup>101</sup>In this way, it was theoretically underpinned that it was possible to fight the noble opposition on the basis of its own, admittedly uninterpreted, principles: for the divine nobility not only justified the imperative of obedience, but also implied that the king,

by definition, could not be a tyrant in the almost diabolical sense meant by the opposition. In this respect, the divine grace for the absolute monarch was in the same sense more politically effective than, for example, a commitment to

Machiavellianism, as ideology - in its double function as an alliance and a demand for interests, whereby the promotion takes place precisely <through the alliance> - is practically more effective than the exposure of the real power relations. In this case,

of course, the alliance took place in the interest of the absolutist ruler, just as the reminder of the difference between the new and the old divine nobility was in the interest of his opponents. This difference existed in fact and was profound. For while for the legal conception of the societas civilis the divine right was only one aspect of the general belief that the existing social order as a whole was willed by God, and that therefore the divine right was the prerogative of the king, it was not the prerogative of the state.

<sup>98</sup> See the sentence of Massillon from the year 1718.

<sup>99</sup> Link, Herrschaftsordnung, 87; Back, Herzog, 143; cf. Uhlhorn, Solms 153f. S. the description of the situation by Putter, Histor. Entwicklung, II, 168f.

<sup>100</sup> Figgis, Divine Right, f259, 246.

<sup>101</sup> Cf. section b4 of this chapter.

The absolutist version of the divine right was based on the (tacit) acceptance of the modern principle of sovereignty, i.e. on the reversal of the traditionally understood relationship between the existing order and the will of the monarch. Moreover, in the legal conception of the *societas civilis* there was no contradiction between the belief that law came from God and the no less important conviction that it (also) came from the "people", especially since according to it not only the royal but *also all other* rule was God-given. The contrast arises as soon as it is assumed that the king's divine right is not identical with the preservation of the legal order of the civil society; then the rights of the "people" are transformed into rights of resistance, while conversely the practical quintessence of the king's divine right is reduced to the commandment of unconditional obedience. Thus, the defenders of the *societas civilis* could reject the divine grace in its absolutist reinterpretation (as it was done 1614, for example, in a very characteristic way at the *Etats Generaux* of 102) and at the same time offer the old version of it for the ideological disarmament of absolutism - just as the latter aimed at the ideological disarmament of the opposition when it presented its power politics in the traditional garb of direct appeal to God. Now the old version of God's grace was defended by two sides whose arguments nominally coincided, although the interests and intentions behind them did not always and not necessarily coincide. There were ultramontans who, echoing such spatulastics as Suarez or Bellarmin, took divine grace to mean primarily the ecclesiastical sanction of all the ruler's actions, i.e. his *de facto* submission to the pope as visible proof of his submission to God's commandments<sup>103</sup>; and there was the noble opposition, which, in the sense of its fundamental adherence to the legal conception of the *societas civilis*, emphasized that the monarch, precisely because of his divine mission, should not act at will, but in accordance with the divine commandments, that is, with traditional law. This was z. This was clearly stated<sup>104</sup>, for example, during the Fronde, and also very vividly formulated in the Declaration of the Prussian Estates of 13 January 1663, in which it can be read that although the juramenta were directed solely at God when the king took office, they nevertheless had the effect "that the high authorities, whom the subjects cannot reproach, must nevertheless look to the mighty hand of the Most High God and fear the same"<sup>105</sup>.

<sup>102</sup> Details, arguments and texts in Picot, *Histoire*, III, (360, 513)

<sup>103</sup> Evidence in Thuau, *Raison*, (104, 112), 114f.

<sup>104</sup> Moreau (ed.), *Mazarinade*, I, 426; 279, 387, 390, cf. Moreau, *Bibliographic*, I, 12.

<sup>105</sup> *Urkunden und Actenstücke*, XVI, 343. Cf. Seckendorff, *Christ*, II, § 6: "God's grace starches the authorities' power and regard towards the subjects, but also reminds them of their duty". Similarly Hooker, *Eccl. Laws*, VIII, 26 = *Works*, 111, 346.

The renunciation of the right to resist, which is implied in this formulation, brings to mind the shift in power that caused the ambivalence of the conservative attitude toward the connivance and the fluctuations in the use of language described above. In France, the strengthening of absolutism, which forced theoretical adjustments, was reflected in the fact that already around the middle of the 16th century, both confessional, aristocratic parties considered it wise to act in<sup>106</sup> the name of the "well-understood" interests of the monarchy, although in the intensity of the struggle, both could not always adhere to it. Ultramontane and Protestants often did the same later on, although they were confronted with theoretical and practical dilemmas that could<sup>107</sup> hardly be solved. The Fronde, whose defeat led to a further consolidation of monarchical sentiments or at least of the insight into the necessity of a monarchy capable of acting, also showed a fundamental reticence towards the monarchy - among conservatives such as Retz or Fenelon<sup>108</sup>. Neither the naked fear of the - admittedly increasing - material power of absolutism nor the despair of the catastrophic consequences of the religious wars for the nobility itself was decisive. Rather, another factor had to be taken into account in the first place. The peasant unrest and revolts that took place in the 16th century. The peasant riots and revolts that broke out in the nineteenth century - and not only in France - with almost unprecedented intensity and force, the analogous popular uprisings that partly accompanied and partly intersected with the Fronde, as well as phenomena such as the radical tendencies of a flügel of the Catholic League, may suggest to broad circles of the upper class the idea that royal authority, even with the admixture of (strong) absolutist moments, was clearly preferable to<sup>109</sup> social anarchy. Fenelon summed up the resigned mood that had spread among the nobility in his time when he wrote that the despotism of the mob was no less dangerous than the despotism of the monarch<sup>11</sup>. In the face of such dangers, Fenelon wanted to grant the monarchy *pouvoir legislatif* just to the extent necessary to maintain order; he called *pouvoir supreme* "un pouvoir d'empêcher les desordres et les violences, soit du dehors, soit du dedans,

<sup>106</sup> Caprariis, *Propaganda*, (100

<sup>107</sup> Interesting details in Stankiewicz, *Politics*, 67ff., 83ff.; Albertini, *Denken*, 97 ff; Puaux, *Defenseurs*, Cf 13, 24.. Mesnard, *Essor*, (383

<sup>108</sup> On this point, Stankiewicz, *Politics*, esp. 143; See, *Idees*, 90 (, 102 ff.; Kotowitsch, *Staats theorie*, 82ff.; Treca, *Doctrines*, ff. 79

<sup>109</sup> Lacour-Gayet, *L'education*, 192 ff; Salmon, *Crisis*, 291 (cf. 277 on the class character of the peasant revolts, which often overshadowed confessional differences among the insurgents).

no Suppl. a l'examen de conscience, II = OC, VII, 101; cf. *Essai philos. sur le gouvern. civil*, VI u. X = OC, VII, 111 (, 118. Even Seckendorff had by no means forgotten the Wiedertauffer and all Aufrihrerischen Bauern, s. e.g. *Christ*, II, 6-7 = p. ff. 211



qui pourraient détruire la société".<sup>111</sup> This attitude fits well into the general picture of ambivalence that we have encountered so far at several levels of the life and work of the defenders of the *societas civilis*.

### c. The Right of Resistance and Conservative Activism

The talk of "conservative activism" can only be disconcerting if one adheres to the view, refuted at the beginning of this paper, that conservatism is rather a psychological or even anthropologically definable attitude than a content with concrete social and historical reference. Of course, activism as such can hardly be reconciled with a (rather passive) conservative attitude, which is presented as <the very opposite of the (rather active) revolutionary one. But if conservatism, by definition, is bound to a certain content and to nothing else besides, then conservative activism may be called the urge to act which assumes highly intensive forms and aims at the defense of that content to which conservatism is bound by its very nature. It can be historically proved that the defenders of the traditional order have very often used very active methods to achieve their goals. With regard to conservatism as an ideological entity, it *must be* emphasized that this militant behavior was not merely an instinctive outburst or a step planned and taken on the basis of pure expediency, but was also grounded in the legal conception of the *societas civilis*, i.e. it had an ideological basis and justification. The concept of feud, as well as its metamorphosis into the right of resistance, testify to the original compatibility or even intertwining of conservatism in the sense of defense of the *societas civilis* and active struggle for this very purpose; for they admitted the use of (almost) all means, if the conviction is present that <the good ancient law is arbitrarily broken. To behave according to tradition does not mean passive or speculative behavior. Thus, the ruling strata of the *societas civilis* do not feel or bear the respective concrete socio-political situation as the fateful outcome of an uncontrollable further development of the ancient and opaque forces of tradition, but, on the contrary, it is the object of considerations of purpose and of deliberations about the best way of influencing it. In other words, the nobility does not slumber in the cradle of tradition, but keeps a watchful eye on its privileges and registers with the utmost attention all movements that could *pose* a danger; the *ideological* invocation of tradition and the eternal order must not, therefore, be confused with *practical* inactivity in the shadow of eternity.

<sup>111</sup> Essai philos. sur le gouv. civil, XI = OC, VII, 123; cf. Gallouedec-Genuys, Prince, 94f.

Practical tragedy or incompetence of the nobility is indeed frequent, but it is always the result of certain socio-political factors and has

Nothing to do with conservative ideology per se. Attitudes like those of J.

Moser, for example, are therefore not the prototypes of a blissful traditionalism preceding the actual conservatism, but rather a reflection of provincialism and the seclusion of Osnabrique conditions, although it *must be* noted that even in Moser's <las l n - d e r tradition- life

<The tradition of the German nobility is strongly supported by the exact knowledge of the dangers threatening this tradition. In addition, Moser wrote under the impression of the meanwhile general resignation of the German nobility to the regime of an already victorious, but on the other hand often abused absolutism. In the preceding period of great conflict with the rising absolutism, however, the nobility had to defend the traditional order actively and activistically. Just as the later activism of counter-revolutionary conservatism culminated in the idea of dictatorship, the activism of anti-absolutist conservatism culminated in the idea of tyrannicide. In both cases the basic dilemma becomes visible, which runs through the history of conservatism like an !anger riB, namely <las need and the necessity to take the tradition activistically in protection, to preserve the divine order <by human violence intake. This basic dilemma has been reflected in several palinodia, which in turn have met concrete needs of socio-political struggle and thus illuminate the activist aspect of conservative behavior from a different angle.

As known and said, the right of resistance is rooted in the legal conception of the *societas civilis*. Its Germanic, somewhat formless core was rationalized on the basis of theological terminology, transforming the<sup>112</sup> original mere right of necessity into a more or less clearly defined and regulated legal process. This ideal transformation soon proved itself in practice, namely within the framework of the unification system, which arose as<sup>113</sup> a response to the strengthening of authority since the end of the century, and the positive legal reality of the estate system in general, which in many cases took account of the right of resistance<sup>14</sup>. The positive legal reality of the status system in general, which in many cases took<sup>114</sup> into account the right of resistance. The specifically conservative character of activism, which had to be inherent in any effective resistance to an "unlawful" system of rule, can be seen in the fact that the right of resistance was reserved exclusively for the nobility. Tschernembl - a high nobleman who made ample use of the aforementioned right - saw a main difference between homin es patricii or proceres and plebeji precisely in the fact that God had given only the former the mandate of *salus publicae*; the latter were the only ones who had the right to resist.

<sup>112</sup> Kern, Gottgnadentum, 145et seq, 174.

<sup>113</sup> Spangenberg, Vom Lehnstaat, ff.93

<sup>114</sup> Wolzendorff, Staatsrecht, 23ff; Unger, Geschichte, ff.11,251



Resistance against the "tyrant", which starts with petitions and attempts to change the vote and culminates, if necessary, in open disobedience and armed insurrection, must be subject to the control of the nobility in all its phases, since it is only the standing leaders with whom the ruler can control the state.

Government pact concluded.<sup>115</sup>

The same exclusivity claim applies

Of course, also with regard to the possible climax of the active resistance: the "murder of the tyrant". St. Thomas and the Council of Constance had already made the rebellion against the "tyrant" and the eventual committing of the same a matter of the "tyrant".

The Council of Constance, on the other hand, just as wisely kept silent about the case in which the individual was carrying out a mandate from God<sup>116</sup>. Especially within the Catholic League and in particularly tense times, against the background of the now emphasized Thomistic distinction between tyrants *de usu* and *de usurpatione*, the view became widespread that the tyrant, especially the heretical one, could also be<sup>117</sup> done by an individual acting independently. Even then, however, it was considered self-evident that the individual perpetrator acted in the interest of the general public, as its embodied will, so to speak. Also Mariana, who as one of very few outside of the mentioned lists approves individual assassinations against the "tyrant", immediately adds that for the execution of such an assassination *noel*, the *vox populi* as well as the consent of *virii eruditi et graves* is necessary<sup>118</sup>. The contemporary scholastics, as a rule, maintain the orthodox view that the deposition or assassination of the "tyrant" may be undertaken only after an *iudicium publicum*.

<sup>119</sup>But even the monarchists reserve<sup>120</sup> the right of resistance and "tyrannicide" to the nobility or the "people" as a consensual collective. This explicit identification of the nobility and the "people," which is programmatic in character and therefore does not appear only in connection with the question of the right of resistance, *must be* emphasized here. It is found both in the Catholic

It is a matter of course for both Protestant and Protestant conservatives, and apart from its nuances (e.g., with regard to the question of whether or not the *populus* is included in the *ordines*), it is a true emblem of conservative sentiment<sup>121</sup>, namely, one that supports the hierarchical legal system.

and the conception of justice of the *societas civilis*. It can and *must* therefore be seen as This can serve as a yardstick for distinguishing between conservative and liberal or democratic ideas, especially since many modern historians, who are hardly aware of the historical nature of the terms, think of popular sovereignty and parliamentarianism in the modern sense at the mere sight of words like „people" and "freedom" in somewhat older texts. But we will have to<sup>122</sup> come back to this in more detail.

The demands of those who invoke the right of resistance usually amount to the *de facto* establishment of an aristocratic republic, albeit without the formal creation of the monarchy; it is therefore not by chance that the Polish example is sometimes referred to approvingly, in France as well as in Prussia. In substance, these demands are simple and stereotypical, with all variations according to time, place and concrete polemical needs: the representatives of the *populus*, or the *stancle*, should determine the lines of government and appoint the rate of the canon, they should be free to assemble, they alone can make their own decisions, etc., etc. In all this, certain social-theoretical principles are presupposed, such as that the monarch was elected by the *populus* on the basis of certain conditions, so that his deviation from the concluded pact must be regarded<sup>123</sup> as sufficient reason for his deselection. Such political principles, of course, stem from the legal conception of the *societas civilis*, but they become fully understandable only against the particular background of the scholastic-Aristotelian theory of contract and rule, which, as we shall see, forms<sup>124</sup> a fundamental pillar of early and late conservative thought. The first is that the inherent radicalism of the modern claim to sovereignty, as raised by absolutism, urged the noble opposition to adopt theoretical positions and practices of comparable radicalism. M. a. W.: after the monarch had

<sup>115</sup> Sturmberger, *Tschernembl*, 104ff.178.

<sup>116</sup> Schmidt-Lilienberg, *Lehre*, 35;33, Mousnier, *Assassinat*, 68et seq. These works contain also the useful information about the prehistory of the doctrine of tyrannicide. Cf. Jaszi-Lewis, *Against the Tyrant*.

<sup>117</sup> Mousnier, *Assassinat*, ff80, cf. ff;196 Landmann, *Souveranetatsbegriff*, f31.; Weill, *Theories*, f6; Mercier, *Theories*, 258; Lewy, Mariana, note67, 7; Baumgartner, *Radical Reactionaries*, ff.113

<sup>118</sup> *De rege*, I, =6 p. 77; cf. Buchanan, *De iure regni*, 100.

<sup>119</sup>S. e. g. Soto, *De just.*, V, =1,3 f. r139 (center)

<sup>120</sup> Schmidt-Lilienberg, *Lehre*, 8581, f.; Weill, *Theories*, 88 ff; Stricker, *Pol. Denken*, 140 ff, ff170, ff261315.

<sup>121</sup> Good evidence in Landmann, *Souveranetatsbegriff*, f22.; Baumgartner, *Radical Reactionaries*, 127ff.; Weill, *Theories*, 224; Schubert, *Reichstage*, 403;344, Mcilwai,n Growth, 303f.

<sup>122</sup> In this chapter, sec. d3 u. b4.

<sup>123</sup> For the above see, among others, Picot, *Histoire*, I, II, 402,75f., f377,385., III, 112 255; Sturmberger, *Tschernembl*, 192f., 311 f.; Breysig, *Entwicklung*, 68 f, 115 ff.; Baumgartner, *Radical Reactionaries*, 127108,110, ff, 147ff, 168 f; Labitte, *Predicateurs*, 228f., 275; Mesnard, *Essor*, 351 f; See, *Idees*, 94 ff; Moreau (ed.), *Mazarinades*, I, 426, 451, 398f. u. II, ff; Schubert, *Reichstage*, 453ff.392

<sup>124</sup> See section b of 4this chapter.

If the sovereignty in the modern sense has more or less been demanded or acquired, the attempt to return to a reality that is no longer alive or simply legendary is no longer sufficient for its effective containment or repression, but the defenders of the *societas civilis* must claim for themselves those drastic rights of sovereignty that the absolutist first claims for itself or actually makes use of. Thus they gradually arrive at the conclusion - either tacitly or by way of psychologically deflating reinterpretations of traditional views - that in very many cases it is more expedient, at least in the short term, to make human law itself *hie et nunc* in the modern sovereign sense than to make the unfeasible and distant divine law. Was the souve

Once the sovereignty had been established ideally and institutionally, only its possession could provide the security which in the good old days had preserved the absence of modern sovereignty. The striving of the enemies of modern sovereignty for this very sovereignty characterizes especially the English development<sup>125</sup>. However, the same phenomenon appeared in various forms on the continent as early as the 16th century, when the conflict between the traditional conception of law and modern sovereignty came to its first dramatic climax during the modern period. As an example, the Catholic nobles challenged the *lex salica* when the possibility of a Protestant heir to the French throne became apparent. Since the *lex salica* had until then belonged to the *lois fondamentales*, its questioning was tantamount to the claim of a re-creation of the law according to current political considerations and thus a claim to sovereignty<sup>126</sup>. The radical reinterpretation of the traditional concept of the king's subjection to the *populus* thus led to the thesis that the *populus* could also create the laws to which the king had to submit. By ruthlessly setting aside the *lex salica*, the libertarians were in fact not much different from the conservatives of the period around 1800, who very often dealt with the principle of legitimacy, which they themselves extolled, on the basis of pure considerations of expediency<sup>127</sup>.

The second of the aspects mentioned above is the often unpredictable dynamics and unpredictable development of socio-political struggles, which were triggered by the activist intervention of conservatives into the action, only to slip out of conservative control shortly thereafter. A first good example of this is again offered by the Catholic League, whose main characteristic was seen, not without reason, in the fact that it evoked the spirits of medieval theocracy and Jacobin demagoguery at<sup>128</sup> the same time. It is true that 3 the

It remains true, however, that a significant part of the Catholic movement rallied around the latter, for whom the attack against the noble Protestantism was rather a stimulus to the attack against the corrupt and "Machiavellian" nobility in general. The appearance and the momentum of such currents within a noble movement explains both the sensitivity of the Catholic nobility to the accusation of democratic agitation raised by the Protestant nobles and the aversion of the latter to any "ochlocracy" in its own ranks, which endangered the nobility as a whole.

wiirde- Another constellation is evident in phenomena such as the  
129

The peasant rebellion in Upper Austria was noticeable at the end of the 16th century. Both the Catholic and Protestant nobility tried to harness the peasant movement for their own purposes or to blame the other side for it; but when the danger for the nobility of all confessions became clear, they remembered the "old right" and even sought help from the provincial prince, who was otherwise regarded as a "tyrant. In the struggle against this "tyrant", noblemen like Tschernembl proposed measures that show conservative activism in the full splendor of its radicalism, even seeming to anticipate the concept of total war; we are particularly interested here in the idea of abolishing serfdom, if necessary, in order to win over the peasants for the nobility and to use<sup>130</sup> their fighting potential against the prince. The activists of the French nobility showed a similar willingness to play with fire, not only during the Fronde, but also during the peasant unrest that preceded it. They repeatedly encouraged the peasants to disobey the royal tax officials, hoping that a successful protest against certain taxes would deprive the state of its desire to tax in the first place and that peasants free of state taxation would be able to give more to their noble masters. However, the peasants have often thwarted such calculations by abolishing all kinds of taxes, thus turning the rebellion against state taxation into an anti-feudal movement.<sup>131</sup>

<sup>129</sup> S. a. a. 218,0,65, and Yardeni, *Conscience Nationale*, 247 ff. See generally Baumgartner, *Radical Reactionaries*, and cf. Weill, *Theories*, 151 f, and Allen, *History*, 302ff286., 343ff, 369,377.

<sup>130</sup> Sturmberger, *Tschernembl*, ff, 56354f.

<sup>131</sup> Mousnier, *Fureurs*, 1. pp; Mandrou, *Classes*, esp. 39, 73 f; Porschnew, *Volksaufstande*, esp. ff.89368 ff. Mousnier's criticism of Porschnew is apt and instructive; he assumes, with all the correct observations in detail, in accordance with the well-known Marxist-Leninist scheme, the community of interests of king and nobility in the framework of the "feudal state" and therefore has to declare the Fronde to be a primary bourgeois-revolutionary movement (432ff.). Cf. note u. u157. 428.

<sup>125</sup> S. u. Sect. 5.

<sup>126</sup> Cf Lemaire, *Lois*, 139et seq.

<sup>127</sup> S. u. Chapter III, Sect. d3.

<sup>128</sup> So Labitte, *Predicateurs*, .365

unintended consequences of conservative activism in the period immediately preceding the French Revolution. These were not only social in the sense that in the course of the events triggered by the conservative action, hitherto dormant revolutionary forces came on the scene, but they also had important ideological aspects, since in their struggle against absolutism the advocates of the conservative cause made use of clarifying natural law slogans and thus contributed not inconsiderably to the dissemination of that body of thought which shortly thereafter, in the appropriate reinterpretation, was to appear on the ideological flags of their enemies. In addition, their propaganda and agitational methods displayed considerable demagogic tendencies and abilities.<sup>132</sup> The heterogeneity of purposes, however, showed itself relentlessly this time as well.

These examples, which could easily be multiplied, explain in historical retrospect the love-making of many a conservative activist of the 19th century with the idea of mobilizing socialist masses for their own purposes and against capitalist liberalism - whereby, of course, in view of the<sup>133</sup> existing constraints, it remained essentially love-making. In any case, they prove that the assumption of a pre-conservative traditionalism in the sense of a partly unreflective partly passive approval of prevailing behavior is historically untenable or a purely hermeneutical fiction and cannot take into account the concrete dynamics of historical developments and struggles. Within this dynamic, however, the legal conception of the *societas civilis* has always had to assert itself, and for this very reason conservatism was not preceded by traditionalism. Moreover, the same dynamic forced conservatism to constantly reshape and reinterpret its concepts and slogans, because it wanted and needed to actively participate in socio-political developments; in this it is no different from any other socio-political movement and ideology. There are many good examples of this militant flexibility, which has little in common with the immovable self-indulgence of traditionalism, even from earlier times. We have already mentioned that the aristocratic opposition of the 16th century was no less free in dealing with some traditional principles than, for example, the later conservatives were with the concept of legitimacy. Such practical and theoretical flexibility could even rationalize (away) phenomena that *prima vista* ran counter to the legal conception of the *societas civilis*. It is almost impossible not to laugh when one reads, for example, among the Spatscholastics or the monarchomachs that the tyrant must be obeyed *ex usurpatione*,

<sup>132</sup> The course of events is described in detail in Egret, *Pre-Revolution*. Cf. the account by Giiring, *Weg*, esp. ff. 181 ff. 212

<sup>133</sup> S. u. Chap. IV, Sect. 2.

<sup>4</sup>In plain language, of course, this can only mean: if the<sup>13</sup> desired socio-political order is sufficiently protected, then it does not matter who takes over its protection, i.e. what is just is what serves the purpose of the client. The conservative acceptance or rejection of socio-political principles on the basis of pure considerations of expediency was particularly evident in the unavoidable interrelationship of these principles with confessional objectives during the 16th century. What is meant here is the frequent alternation of monarchomachic and monarchophilic views among both the protean and the catholic wing of the French nobility at the time of the religious wars, as noted and described by the respective positions of the enemy. Each side, of course, could claim that it always rejected the "unjust" ruler and respected the "just" ruler, and that it was not the ruler, but only the ruler who was different, thus leaving the external framework of the legal conception of the *societas civilis* unchallenged. In fact, during those fierce controversies, in which the strongest arguments were very often the bloodiest, the principles of the traditional conception of law were in no way enriched, refined or changed, but only used by all sides in their respective interpretations, so that Catholic theorists could influence their Protestant enemies and vice versa.<sup>13a, 5</sup> This, of course, implies that confessional and *social-theoretical* oppositions did not necessarily coincide, although confessional and social-political oppositions were mutually dependent on each other on all possible levels and in all possible forms - an observation which could perhaps provide a thread of orientation within the highly intricate lines of argumentation of those disputes. This independence of the confessional and the social theoretical, however, interests us here only from the point of view of the latter, insofar as the latter could be manipulated under the pressure of the needs of the confessional struggle in such a way that it allowed the noble opposition - no matter whether of Protestant or Catholic observance - tactical changes of position and ripostes without great difficulty. As we must repeat, such a plasticity of conservative thought would be inconceivable without the existence and effect of conservative activism. For in traditionalist passivity, as in any other, ideas and concepts must remain immobile and one-dimensional; their eventual binding unambiguity is bought at the price of their limpness.

<sup>134</sup> Vitoria, *Com.*, qu. art. 60, = 6 III, 54; Suarez, *De leg.*, 7-8; 3, 10, Brutus, *Vindiciae*, III = p. 195 ff.; Beza, *De iure*, V = p. 38; Buchanan, *De iure regni*, 53 f., 100.

<sup>135</sup> On these complicated procedures, see, in addition to the classical analysis by Weill (*Theories*, esp. 35 ff. 55, 55 f., 62 ff., 71 ff., 81 ff., 134 ff., 153 ff., 206 ff.): Mercier, *Theories*, esp. 236 ff., 381 ff.; Lemaire, *Lois*, 105; Mesnard, *Essai*, 315; Figgis, *Pol. Theory*, 187/181, ff.; Landmann, *Souveranetatsbegriff*, 36 ff.; Chlumecky, *Zierotin*, I, 273 ff.; Nummerger, *Politisierung*, 103 ff.; Caprariis, *Propaganda*, 425 ff.; Allen, *History*, esp. 209, 214, 224; Kretzer, *Calvinismus*, esp. (425

In reality, what appears in the 17.18th century on the continent as a blissfully passive traditionalism is nothing more than the aristocracy's pusillanimity after its defeats in the struggle against absolutism. These defeats, of course, could neither break the nobility's consciousness of its status nor erase its reminiscences, all the more so because it continued to be a fundamental pillar of the state. The disciplinary process<sup>136</sup>, which the modern state initiated and carried out in the 17th and 18th centuries, affected not least the nobility itself. The ideal of a noble republic was finally abandoned, and at the same time the desire for activist adventures waned. Moser, for example, gives theoretical expression to this mood when he asserts that, „Landes- Ho heit" and „Landes-Freyheiten" are by no means "incompatible things," expecting the estates not to be "incompatible things.

„unlawful " demands, and to deny them the right of resistance, especially the right of All this, of course, was said with regard to the German situation at the time; in France, conservative activism, which was 1788opposed to absolutism, was still making waves.<sup>137</sup> Nevertheless, the French events themselves showed that, in view of the ambitious appearance of new socio-political forces pursuing radically new goals, conservative activism could no longer turn with all its force against absolutism with impunity. The liberal or democratic revolution gave it an enemy against whom its vital energy could now be unleashed.

#### *d. The socio-politicalcharacter of the S tiindum*

In order to establish the connection between the problem of the Standetum and the actual subject of this work, i.e., in order to prove that the Standetum has generally been a stronghold of conservative thinking, i.e., a representative and advocate of the legal conception of the *societas civilis*, its essential difference from the parliaments, which only emerged on the soil of the modern state and which explicitly or tacitly presuppose the modern idea of sovereignty, has to be established. The clear elaboration of this difference in essence seems all the more necessary today, as a broad strand of liberal historians nurtures the fiction that states and (modern) parliaments actually represent two more or less harmonious successive phases of a single and uniform development or two steps on the universal path of "the Occident" to "freedom", which is thus declared to be the necessary result or even the original attribute of, „Occidental history". Because of

<sup>136</sup> According to Oestreich, Geist, 236f., ff.190

<sup>37</sup> Von den Deutschen Landen, f1149., f1177., 1188,1355.

In view of its - sometimes openly admitted - intention to make the study of history useful (i.e., to subordinate it to current political objectives), this view deserves to be called "liberal Bolshevism," although it is actually much older than Bolshevism itself. In fact, it derives from the Whig interpretation of English history and was also carried on by<sup>139</sup> romantic liberals of the 19th century. For several decades, however, it has pursued new goals. On the one hand, it wants to fight "right-wing and left-wing totalitarianism" and to show its historical incompatibility with the "whole history of the Occident" and thus its monstrous character, and on the other hand, it wants to support liberal "conservatism"<sup>14</sup> in its struggle against the democratic reinterpretation of liberal principles by mixing liberal and standish ideas:

Now, the continuity of the status quo and modern parliamentarism, or of the medieval and modern political traditions of "the West," may rest on the fact that in both cases the law was regarded as the supreme master and the people as (at least indirect) source or guarantee of the preservation of the law. The fact that the differences between the two interpretations of these concepts have given rise to more disputes than the nominal commitment of all sides to them seems to be of little interest to the liberal scholars in question.<sup>14</sup> Others, however, assume that the dualism of people and government, according to which the former has the task of controlling the latter and thus of safeguarding "freedom," is a characteristic of modern statehood in general,

<sup>138</sup> Thus, for example, Maier wants to look for "preforms and models of our present-day democracy" in the study of the past, "as our free-thinking ancestors did quite impartially in the 19th century". He distances himself from the unhistorical exaggerations of these ancestors, but on the other hand he warns - and here lies the emphasis - against historical relativism. His zeal goes so far as to try to trace the chancellor's democracy of the Federal Republic's Basic Law back to more ancient traditions (Pro bleme, esp. 398, 411 ff.). It is characteristic of the confusion that this view creates that Maier calls the state-absolutist direction "conservative," while he calls the opposition to it "social liberal" (Polizeiwissensch., 27). Bos! also tends toward similar views. Gesch. d. Repras., esp238. IX. They were massively but superficially advocated by Carsten (Princes, esp. 433f.); cf. the well-founded criticism by Herde, Deutsche Landstande, esp. 294 ff. It should be noted that the thesis of the continuity of the development of the Estates and the parliamentary system is based on the English case as a model, which is, however, very poorly interpreted and influenced by legends of fear, see section of this 5chapter. Cf. next note.

<sup>139</sup> Lousse, Parl. or Corpor., ff.278

<sup>140</sup> -He was discussed in detail in the section2. from chapter I.

<sup>141</sup> A typical example of such liberal blueness is the book by A. Carlyle, Political Liberty (published in 1941!). Similarly UIJmann, Individual and Society, esp. 67 ff., 97f.90,



which arises at the moment when a restricting force joins the<sup>14</sup> forces- <sup>2</sup>Here, the essential is overlooked, that/3 the status-structured

The "people" could (somewhat) limit the power of the monarch only because the legal conception of the *societascivilis* was still alive and was regarded as binding for all members of the social body or as being above all others. Thus, this "state" was not yet (completely) the modern state, as the wrongly assumed independence or even temporal priority of absolutism wants to suggest in relation to the controlling activity of the states, an activity that was supposedly brought into being by the existence of the absolutism itself in the form of modern government. It is not this dualism that is the essential feature of modern statehood, but the modern idea of sovereignty and the resulting state immediacy of all individuals, which put an end to the rule of the *oikos* leaders and thus, in the long run, also to alien *pouvoirs intermediaires*. Nor can the correct statement about the continued existence of participatory freedoms at the regional and local level throughout the absolutist period<sup>14</sup> be interpreted as meaning that the state element, by virtue of its own dynamics, set unimaginable limits to absolutism, even in its most successful phase. For these limits resulted not least from the socio-political character of the higher bearers of absolutism itself, who came from the nobility and defined themselves as absolute only in relation to the nobility; seen in this way, the abolition of the nobility (and that means: of all prerogatives within the *societas civilis*) would not entail the complete victory, but on the contrary the end of absolutism and the transition to constitutional monarchy or even to the full and indivisible sovereignty of parliament. This was clear to many a clear-sighted person even before 1789.

The manipulation of history <by contemporary liberal historians in the The question that interests us here is obvious if we simply recall the position of those directly concerned, namely the conservatives who fought against liberalism and democracy in the period around and after 1789. The passionate debates of 1788/89 on the modalities of the convocation of the Estates General in France, but also the later writings or detailed analyses of Gentz, Jarcke, Vollgraff, Campe, Stahl, and others, specifically devoted to the difference between the status quo and modern parliamentarism, <sup>144</sup>testify to the conservative awareness that this was a matter of the deadly contrast between the legal conception of the *societas civilis* and modern statehood. The conservatives wanted and said what the connection between modern statehood and modern parliament consisted of, namely in the demand of the

The idea of sovereignty thus once again emerges as the decisive yardstick<sup>145</sup> for judging the conservative or non-conservative character of a socio-political attitude. The idea of sovereignty thus shows itself once again to be the decisive mal3stab for judging the conservative or non-conservative character of a socio-political attitude. As the internal structural coherence of the state theories of Hobbes and Spinoza or Rousseau already suggests, the modern idea of sovereignty could just as well be related to an absolute prince as to a people or an assembly of popular pretenders. The absence of this idea in the *societas civilis* was noticeable in the twofold respect that the competence to create law according to one's own will *ex nihilo* was denied not only to the prince, but also to the "people". The assumption that the people are not sovereign forms the ideal basis of the status quo, while the idea that the people are the only sovereign underlies modern parliamentarism. It is obvious that with such a serious difference in the attitude towards the idea of sovereignty, the "people" should also be defined differently, since, as we know, modern sovereignty, in establishing the modern state, implies *eo ipso* the immediacy of all individuals. The "people" invented in the *Standetum* does not represent the sum total of all individuals, nor can it create law sovereignly; it encompasses all those who possess<sup>146</sup> rights and privileges, and its task is to defend the God-given and nature-given law in its basic existence, despite adaptations and modifications <sup>147</sup>Thus, "people" and *Fiirst* make up the components of a higher whole, which in turn stands under the sign of law or rather may embody the current concretization of law.

This concretization depends, of course, on the respective power relationship between the rulers and the "people," which varies greatly according to time and place. But even if we take into account a somewhat later phase of this relationship, when the ruler and the stangle no longer jointly form the country and act together, but rather stand against each other as "sovereign" and "country" and negotiate with each other<sup>148</sup>, the claim of the status-structured "people" to unrestricted validity and application of the legal conception of the *societas civilis* remains unchanged. Although the sovereign was now able to determine in many cases what was right and true custom, so that at least the rulers' invocation of it not infrequently amounted to its undermining, the claim of the estates still had strong support in the existing sociopolitical reality. As long as the idea of sovereignty had not (entirely) prevailed in practice and the totality of socio-political life was best represented by the

<sup>145</sup> See, for example, Vollgraff, *Tauschungen*, 53.48,

<sup>146</sup> Vollgraff is also aware of this, *Tauschungen*, 36 f. For him, parliamentary representation and the modern state (i.e., uniform regulation of the law and centrally organized bureaucracy) belong together - and rightly so, f59.

<sup>147</sup> Scheuner, *Volkssouveranitat*, ff;306 cf. Hofmann, *Repräsentation*, ff.191

<sup>148</sup> Brunner, *Land*, 492ff.

<sup>142</sup> So Naf, *Friihformen*, 227.

<sup>143</sup> Gerhard, *Aufsätze*, 72f.; Oestreich, *Geist*, u289,. *Standetum*, f72.

<sup>144</sup> They are discussed in more detail in Chapter III, Section Sa.



In the case of the "Stancle", the "Fiirst" and the "Stancle" formed independent subjects of customary rights and could exist in parallel - no matter whether competitively or consensually - and administer<sup>149</sup> their own main area. At least from the point of view of the Stancle, this tense coexistence was a commandment of the legal idea encompassing the *societas civilis*. The standische orders with regard to the internal administration of the country are not products of an exclusive legislative right, to which also the Fiirst would have to submit, but rather the expression of customary partial rights and privileges<sup>150</sup>; and insofar as the Stancle concede to the Fiirsten <the right to regulate various administrative and financial matters of the country on its own, they in turn conceive these acts of the prince not as an outflow/3 of his sovereignty, but as an outflow of the regalia already embodied in the traditional conception of the law. On the concrete interpretation of what belongs to the regalia or not, there is always a struggle, which is decided by the existing balance of power. This means that the relations between princes and estates are not subject to a fixed institutional regulation in the sense of modern constitutions - not because the general idea of law does not permit any abstraction from ancient rights and privileges, whereas the modern institutional regulations of the relations between the organs of the state presuppose a formal-general conception of the state, i.e. one that abstracts from all historically given particulars. The idea and reality of a fixed and iberpersonliche institutional framework are alien to the state, here it is a matter of <las suum cuique and privileged legislation, not the fixed distribution of state competences, so that even the term "dualistic state of the estates" must not be interpreted in the sense of such an institutional definition, but rather in the sense that an indiscriminate struggle between two centers of power is going on, the result of which is the<sup>151</sup> different division of socio-political rule into two parts. Thus, there is a fundamental difference between the "dualistic state of the estates" and the much later constitutional monarchy, which was only established on the basis of the "constitution".

<sup>149</sup> Thus HaB, Kurmark. Stancle, 313, who anticipated Brunner's main thesis. On the idea of the cooperation of the Prince (Emperor) and the Estates on the level of the German Empire, see Schubert, Reichstage, 525.515,

<sup>150</sup> This is admitted even by Rachfahl, who has made the greatest effort to work out the legislative independence of the estates against Tezner's interpretation (see next note). He also recognizes the multiple dependence of the prince, but he still believes that the estates had "sole power" in the tax question (Dual. Standestaat, esp. 168 f., 170 f., 181, 186, f191.).

<sup>151</sup> Tezner, Technik, esp. 11, 13, 35ff., 85ff.; cf. already Unger, Geschichte, II, Rachfahl 225. (Dual. Standestaat, 201ff.) defends the term "dualistic Standestaat" against Tezner because, with alien reservations, he tends to a more modern-institutional conception of the Standestaat.

modern concept of the state, i.e. the unified power of the state, whose organs are in an institutionally regulated relationship to one another.<sup>152</sup>

The absence of a consistent and conscious claim to sovereignty, i.e. <las adherence to the legal conception of the *societas civilis* as an essential feature of the status quo, is also noticeable in the fact that the idea of a separation of powers in the modern sense does not appear at all in the horizon of his ideas or expectations<sup>153</sup> - which, of course, was accompanied by the lack of a firm institutional regulation of the relationship between the princes and the status quo just discussed. Here, once again, the connection between modern sovereignty and the separation of powers must be pointed out. If the Estancle do not demand the separation of powers, it is not only because they are alien to the idea of a voluntaristic creation of law and therefore cannot imagine that they would take the role of the sovereign legislator in such a separation of powers, but also because they are within the reality of the Estancle, but also because, within the reality of the state, they have the possibility to perform several functions at the same time, namely to take into their own hands the execution of the measures they have (co-)decided upon and, besides, to control practically important areas of jurisdiction. All this, however, took place outside the sphere of the regalia, which was characterized by a similar mixture of functions and competences. This state of affairs, however, corresponded to the legal conception of the *societas civilis*, which was intertwined with the *justitia distributiva* and the *privilegium*, without distinguishing between the state and the social, the political and the economic, the legislative and the administrative. In their concreteness, the state "liberties and justices" could only endure in this mixture and through it. And when the great singularizations, namely "freedom" and "justice," took their place, this meant the victory of the modern idea of sovereignty. Sovereignty and such singularizations necessarily go hand in hand insofar as <las so uverane law is unique, uniform and universal, i.e. one in every respect. As such, however, it constitutes the work of a concentrated legislative will which, precisely in its endeavor to make visible the primacy of the legislative function in its new socio-political significance and intensity, programmatically distinguishes the same from the executive and judicial. Thus, separation of powers and modern sovereignty go together - at least for a certain phase in the history of the latter.

The difference in attitude toward the crucial question of sovereignty ultimately also determines the essential difference between modern parliamentarism and standetum in the question of representation. Since modern sovereignty implies the state immediacy of the individual as an individual (for the time being independently of the state), it is not the case that the

<sup>152</sup> On this point, Quaritsch, Staat, 182ff.

<sup>153</sup> Already Campe, Landstande, f361; cf. Back, Herzog, 177.

The number of individuals who can and may enter into a direct relationship with the state depends on the number of individuals in each case), so a parliament which stands on the ground of modern statehood must represent the whole people as the sum of the politically entitled individuals through the deputies elected by these individuals. It is quite different with the Standetum. Since here the modern idea of sovereignty is unknown, even incomprehensible, and thus also *das Volk* is not conceived as a sum of individuals, only *das Volk* in the sense of the *societas civilis* can be represented by the Stancle. This people, however, consists of the *oikos* leaders, who are lords of the manor and, moreover, capable of defense or feud; they are under the umbrella of the good old law, they are thus holders of privileges (liberties and justices), and thus they feel themselves to be co-lords of the country, although - or rather because - the modern idea of sovereignty is quite foreign to them. Therefore, when they appear in a status-based structure, they are not commissioned by the wider circle of politically entitled individuals to represent them, but they appear by virtue of their own authority, and their autonomous appearance precludes the political lawlessness of the mass of the population<sup>154</sup>. Political lawlessness here means that this mass may not have any direct relationship to the "state" - and the "state" is not a sovereign state in the modern sense, because it cannot seize each individual from this mass directly, but only through the mediation or with the tolerance of an *oikos* leader. This fact is now interpreted by the *oikos* leaders who appear in the stands to the effect that they not only protect the people of their *oikos*, but also represent them as often as it is a matter of addressing their concerns. This has led some researchers to claim that the stancle were a national representation in the true, i.e. in the modern sense of the word, that they represented not only themselves and their own interest, but also all inhabitants and the general interest of the respective country.

especially with regard to tax issues<sup>155</sup>. Here, essentials are overlooked or misunderstood. On the one hand, the Stancle's invocation of the common benefit and the common good cannot be interpreted as an indication that they represent all the inhabitants of the country, because even the prince at every opportunity

The Stancle<sup>156</sup>'s reference to the interests of all the inhabitants of the country cannot be taken in its face value. On the other hand, the Stancle's reference to the interests of all the country's inhabitants cannot be taken at face value, since behind the fiction of the general interest there is always and exceptionally the Stancle's own interest. The verbal identification of the Stancle with the general interest did not only serve this purpose,

<sup>154</sup> Tezner, Technik, (70, 74f; Hall, Kurmark. Stancle, 308ff; Brunner, Land, ff261 Already Vollgraff, Tauschungen, 24f.;13, Campe, Lehre, 99.

<sup>155</sup> Already Unger, Geschichte, II, ff;431 Rachfahl, Dual. Standestaat, ff,192 ff;198 Below, Territory, ff.120

<sup>156</sup> According to a remark by Tezner, Technique, 69.

The aim was not only to increase their moral authority and to counter analogous attempts by the princes, but also to prevent any princely interference in the affairs and concerns of the unrepresented inhabitants of the country and to leave this whole area to the control of the leaders of the *oikos*. This is especially evident in the central question of taxation. If the Stancle, in the name of the general interest of all the inhabitants of the country, were to impose additional taxation of tenants and peasants, they do so because the overburdening of their own people for the sake of the princely treasury is a diminution of their own income. of their own income could result. The statutory entitlement to The representation of the peasants, etc., is thus in reality a reminder addressed to the prince that they are neither inaccessible to the state nor allowed to become so, that the prince should not even, in the form of his tax officials, penetrate into areas of the *societas civilis* hitherto inaccessible to him, in order to make them inaccessible to the state.

In this decisive sense, therefore, the stancle, claiming to protect all the inhabitants of the country, defend the overall order of the *societas civilis* and thus their own rights and property. Moreover, the very fact that the countryside is based on property means that it is only a real and not a real order.

Under these circumstances, there can be<sup>158</sup> no question of a representation of all subjects. The absence of a personal representation in the

The modern parliamentary sense is also reflected in the imperative mandate of the members of the Estates Assemblies. By definition, they could not represent anyone if they had not received an imperative mandate from him, but they did not receive an imperative or any other mandate from the population as a whole. The necessity of the imperative mandate, however, resulted from the legal conception of the *societas civilis*: if a right or a privilege is unencumbered

If the right to vote is external and inalienable, its holder must be protected in advance from the decisions of this or that assembly, taken independently of him<sup>159</sup>. It

It was therefore natural that the princes competing with the estates sought the replacement of the imperative mandate by the plena potestas of the estates' deputies. They wanted quick and final resolutions of

<sup>157</sup> Already Campe, Lehre, 101; cf. Hall, Kurmark. Stancle, 309; cf. note u131. of this 428chapter. In a submission of the Kurmark Stancle to Hardenberg of 3. 6.hiell1811 es: If now in those times [in the 17th century] the nobility agreed, that on its subjects taxes were put, then it was it <hole, which actually paid the same: because it verier thereby at its gutsherrlichen Einkünften" (quoted Steffens, Hardenberg, 186).

<sup>158</sup> Posse had already clearly1794 stated this, see the articles by Hofmann, Representation, 350, quoted passage.

<sup>159</sup> Muller, Mandat, 99. On the imperative mandate as a blank defense of the Inhabitants of the Cahiers before the Etats-Generaux, see Cadart, Regime, 153.

Because the plena potestas of the deputies usually favored the plans of the princes, their observance by the commissioners of the deputies was often seen as a tacit approval of the first wives<sup>160</sup>. The free mandate contributed considerably to the loosening of the internal bonds of the *societas civilis*, and so it was no coincidence that it was legislated by the French National Assembly in 1791 with the aim of creating a uniform civil law leveling the historically given particularities of states and lands and thus consolidating the national territory.<sup>161</sup>

In the light of these findings, it is misleading to continue to emphasize the beneficial effect of Standish principles and practices on the formation of modern representative bodies, knowing the radical difference in essence between Standetum and modern parliamentarism. Those who do so remain ultimately incapable of avoiding modernization and anachronism across the board. Thus, when it is said that modern parliamentarism had at least adopted the principle of representation itself, it is simply forgetting the identity of the estates and the country (= the estates *are* the country, they do not represent it) and therefore mistakenly associating the essence of estates' representation with functions such as limiting the power of government or participating in it; the monarch as the representative of the unity of the state is then opposed by the representatives of social (partial) interests<sup>162</sup>. Here, the existence of the unity of the state or of the unified power of government is at least indirectly presupposed, and then it is assumed that the Stande had acted as opposition to it. This was not the case. The great period of the Stande actually falls into the pre-state epoch and comes to an end with the consolidation of the absolutist state. And when the Stande make demands, they do not oppose a unified governmental power in a unified state, but they refer to the legal conception of the *societas civilis*, according to which a parallel existence and effect of several socio-political powers and powers in the absence of any competence is possible.

<sup>160</sup> Post, Studies, 116 (, 160( Miiller, too, is clear about this integration of the free mandate (Mandat, 150, 202). Therefore, his assertion (74) that the free mandate does not constitute a specific difference between modern and state parliaments seems paradoxical. Even in the few cases in which the free mandate was preserved without pressure from the rulers (as Miiller points out), there were special tactical reasons and a special relationship of trust between the mandate givers and their deputies. The basic constellation, however, remained unchanged. Cf. u. S. (205

<sup>161</sup> Miiller, Mandate, 49et seq.

<sup>162</sup> Hintze, Staat, 140 (but cf. 121, where Hintze emphasizes that the estates are the country and that they do not represent it on the basis of a mandate but of a traditional conception of law); Lowenthal, Kontinuitat, 346(

The state is natural in the modern sense of the distribution of powers. That unity of the state or modern statehood, which was simply incomprehensible to the estates, wants to (symbolically) corrupt the modern parliament, which therefore (at least according to its claim and despite the compromises it often made with constitutional monarchs in times of transition) cannot be regarded merely as a representative of partial interests of society vis-à-vis the state power, as the estates supposedly were. From this point of view, the difference between the status quo and modern parliamentarism is so great<sup>3</sup> - it actually coincides with the difference between the legal conception of the *societas civilis* and the modern idea of sovereignty - that parallels of any kind hardly contribute to the understanding of the matter, even if they are kept as formal as possible: precisely this formality deprives them of any historical value. The struggle continued for centuries not for the continuity of the formal, but rather for the turn or the transformation in relation to the content.

As a living contrast to modern statehood and thus also to the modern parliamentarism, which is conceivable only on the basis of the former as one among several constitutional possibilities, the Standetum reflects the whole colorful diversity, the asymmetrical polycentrism of the *societas civilis*. This already begins with the composition of each estate, where natural and juridical persons, individuals and corporations are mixed with each other, whose fixed status differences from each other are<sup>163</sup> by no means cancelled by the common affiliation to the same estate. In addition, of course, there is the separation of the estates from one another, which is shown both by the fact that the electability of a deputy is tied to his or her own estate and by the absence of joint resolutions by all estates, since each estate votes<sup>164</sup> for itself alone. The majority principle of the modern parliamentarism is here - iibrigen since very early time<sup>165</sup> - consciously rejected, because it is seen that the numerical majority of the one side can eliminate the well-acquired and traditional rights and privileges of the other, which admittedly contradicted the legal conception of the *societas civilis* in general and the principles of the *justitia distributiva* in particular. In view of this situation, it was no wonder that the road to the implementation of the modern idea of sovereignty in its parliamentary form, and thus to the victory of the majority principle, had to go both beyond the equalization of the stande and beyond the (for the time being formal) elimination of the status differences between the members of each of them. The heterogeneity of status representation at all levels is, after all, an important reason why it has not been able to form a unified liberal-anti-absolutist front in the long run - despite assurances by liberal historians. Antagonism

<sup>163</sup> Lousse, Societe, esp. ff.342

<sup>164</sup> Gerhard, problems, f22.

<sup>165</sup> For a record of the year, 1577see Griffiths (ed. ), Repr. Gov., 449.

between the nobility and the cities in their schöfl makes it clear, on the contrary, that the struggle for the monarch's favor and the striving for an alliance with him against the respective other estate was at least as frequent a phenomenon as the common opposition of all stancle against the "tyrant."<sup>166</sup> In view of these and analogous facts, the view cannot be accepted that the stancle had fulfilled functions of statehood and had maintained the unity of the country partly by granting taxes that served the common good and welfare and partly by thwarting dynastic practices.<sup>7</sup> On the other hand, it can be argued that the estates, acting in accordance with the legal conception of the *societas civilis*, sought freedom from the nascent state rather than a permanent share in all its activities;<sup>16</sup> that the unions between estates from different territories were very often stronger than, for example, the coalitions between knights and cities within the same territory; that they were little or scarcely interested in questions of political superstition and contributed practically nothing to the creation of modern armies and other organs of national policy; that their inner discord not only made it possible for the fiefdoms to play them off against each other, but also facilitated the establishment of General Landtage, e.g., the "General Assembly", the "General Assembly", the "General Assembly", the "General Assembly", the "General Assembly", the "General Assembly", the "General Assembly", the "General Assembly". B., in which the voice of the whole country could be heard; that they did not develop any new ideas and showed themselves truly interested and active only when it was a question of their traditional *jura* and *libertates* or of the acquisition of special rights; that, in short, they remained caught within the narrow horizon of their specific way of thinking and did<sup>168</sup> not fear and fight for general rights and liberties, but only for their own, not for the state, but rather for their status. To all this can be added that only the monarchy created the territorially (somewhat) closed spaces within which stancle could (somewhat) appear united, and that even their convocation was mostly not an autonomous or spontaneous act, but was due to monarchical initiative, which thereby involved the *oikos* heads, intent on their particular interests, in general problems and

<sup>166</sup> About different constellations in the relationship: Prince - Nobility - Cities in the German Raum s. e. g. Petersohn, *Fiirstenmacht*, ch. IV-V (but cf. p. 130); Breysig, *Entwicklung*, 78 ff, 186 ff; Hall, *Kurmark. Stancle*, 161 ff; Hartung, *Krafte*, 67 f.; Kohle, *Landesherr*, 85 ff, 99ff, 112ff, 166f

<sup>167</sup> Thus Naf, *Friihformen*, 234; *Herrschaftsvertrage*, cf. f32,37.; *Staat*, 37f.

<sup>168</sup> Hartung, *Krafte*, 75 f.; Gerhard, *Aufsätze*, 18 ff, 43 f., 47ff.; Helbig, *Fiirsten*, 70 ff, 186 ff; Wettin, *Standestaat*, 474, *Adel in Kursachsen*, 238 ff; Buchda, *Reichsstände*, 240 ff; Heinrich, *Adel in Br .*, 283 f.; Tezner, *Technik*, 82 f. (cf. 18 ( as well as Unger, *Geschichte*, II, 274ff, ff., ff337285); Hall, *Kurmark. Stancle*, ff;85 *Oestreich, Standetum*, f68

The parliament was forced into it<sup>169</sup>, as it were. In England, too, which is often cited as a prime example of independent life and organic growth of the Estates up to modern parliamentarism, the feudal parliament was able to flourish only within the framework of a fairly centralized monarchy, initially because the monarchy considered it the most expedient and flexible instrument for achieving its purposes. And if the experiment succeeded here (in contrast to France, for example, where the importance of the provincial estates always remained great compared to that of the general estates), this was again not due to a special sense of statecraft on the part of the English *oikos* leaders, but to the geographic limitation, unity and uniformity of the country, which allowed<sup>170</sup> both regular intercourse and a socio-political overview on the basis of the technical means available at the time.

This recapitulation of the evidence and indications for the general folding of the state to the legal conception and practice of the *societas civilis* must conclude with the warning against deducing a moral reproach from the above-mentioned facts, as was common especially among older German historians with monarchical sympathies. To accuse the perennialists of a suspicious role in the formation of the state, as well as of self-interest and short-sightedness, is to require them, in retrospect, to think and act differently from the way they should have thought and acted on the basis of their historical identity. Leaving aside the question of how far the motivations of the princes were more "moral" than those of the stancle, it must be clear that the end of the development which, as we know today, led to the modern state, was not yet foreseeable in the sixteenth or seventeenth and eighteenth centuries. Therefore, the states cannot be accused of having "betrayed" something that did not yet exist<sup>171</sup> in a generally recognizable form - not to mention the fact that in this case the higher morality of the progress towards modern statehood must first be proven on the basis of compelling criteria. What has been called "bigotry" and "self-interest" on the part of the Stancle, and which in reality is their adherence to the legal conception of the *societas civilis*, must be pointed out, however, if it is a question of opposing their proclamation *as* quasi-forcible harbingers of modern parliamentarism.

The difference in essence between statism and modern parliamentarism is evidenced by the historical fact that the transition from the former to the latter

<sup>169</sup> Post, *Studies*, 146; Cadart, *Regime*, 25 (cf. 37, 40). Naf also admits that the Stancle were first awakened by the monarchical rule (*Friihformen*, 228). Cf. the remarks of Helbig (Wettin, *Standestaat*, esp. 388ff., 465 ff), who points out the importance of the fiirst action for the unification of a country even in the absence of a historically given legal community and thus relativizes the theses of Brunner (*Land*, 211).205,207,

<sup>170</sup> Lyon, *Med. Constit.*, 169; Myers, *Engl. Parliament*, 141 ff; Koenigsberger, *Powers*, f215., 241f.; Fawtier, *Engl. Par!.*, passim; already Hintze, *Staat*, 50f.

<sup>†1</sup> Cf. Birtsch, *Landst. Verf.*, f36.



The latter has always meant a radical break and a considerable modification or even transformation of the existing distribution of power. We will see<sup>172</sup> that even the legendary continuity of English development is in important respects an optical substitution, since the (partial) continuity of the physiological and historical subjects is by no means equivalent to a continuity of function; and it is precisely function that is important here. Nevertheless, the French events of 1788/89 confirm beyond any doubt that the transformation of the Estates General in the sense of the basic principles of modern parliamentarism, i.e., partly presupposing and partly advancing modern sovereignty, coincided with a profound revolution. It should be noted that the revolutionary character of this re-functioning was known not only to the conservatives of the 19th century, who not unjustly insisted on<sup>173</sup> the essential difference between the constitutional and the representative, but also to all the political thinkers among the contemporaries of those events. The vehemence and pedantry, one might say, of the dispute over the major and minor modalities of convening and assembling the Estates General bears eloquent witness to this. Here nothing was given, because all sides wanted what they could get.

was at stake. The decision to convene the General Assembly was, of course, a Although this was initially a victory of the nobility over the monarchy, the prospect of limiting the power of absolutism by means of a "representation of the „people" brought to the fore those socio-political forces that no longer understood representation (and therefore also the "people") in status terms, but in terms of natural law and individualism, i.e. against the background of the modern idea of sovereignty. The initial consensus between the nobility and the tiers on the need to convene the people's representatives thus turned into bitter competition between the concept of individualistic natural law and that of prerogative and justitia distributiva<sup>174</sup>. When the nobility demanded the observance of the rules of convocation of 1614, they waved, since it was a question of preventing<sup>175</sup> the *partie vote* and thus the elimination of the basic principles of the Estates. The royal policy, however, initiated, admittedly rather unknowingly, a revolutionary development in this respect. The king declared that he would seek the advice of the deputies on general national questions, which, of course, made the imperative mandate and the commitment of the deputies to the content of the *Cahiers* a questionable issue and, in the end, their

The term "Assemblée representative de la Nation entière" is used in the preamble to the electoral regulations of January 24, 1789. The expression "Assemblée representative de la Nation entière" is used in the preamble of the electoral regulations of January 24, 1789, and indicates<sup>176</sup> the future development.

The diametrical historical and socio-political opposition of the *Standetum* to modern parliamentarism also becomes clear when we examine the ideological creeds of the *Stancle* and note their conformity with the legal conception of the *societas civilis*. It is true that the *Standetum* has not been a cradle or tribune of great theory, and that its ideological assumptions are implied rather than systematically and elaborately stated. The confirmation of the Estates' liberties in the charters drawn up in return for the granting of tributes or in the accession and homage of a new monarch contain important hints and references in this regard, although in the negotiations between princes and Estates the debate is almost always exclusively about the concrete point in dispute, while the general ideological framework within which all this takes place is more or less assumed to be known and self-evident.

Stands for-<sup>177</sup> To a deepening of the ideological platitudes about the old The only time that the first tries to impose his will unilaterally or to present his will as a right and the right as a product of his will, is when it comes to conventions and conventions. But already the *blois* confirmation of the civil liberties contains or implies the belief in a divine-national order, which exists since time immemorial, as well as the fundamental idea of *justitia distributiva*. Beyond this, however, there are many and more detailed testimonies to the *Stancle*'s conservative outlook. They will be evaluated at the appropriate place in the reconstruction of the figure of thought of anti-absolutist conservatism, to which we now turn.

<sup>172</sup> In the section of 5. this chapter.

<sup>173</sup> Thus, Vollgraff emphasizes that the "representative system" was first brought into the world by the French revolution, namely by the „illegal" transformation of the Estates General into a "representative constituent national assembly" (*Tauschungen*, 31.).

<sup>174</sup> Beik, *French Revol.*, 14; Carcassone, *Montesquieu*, 581ff. Cf. Mallet du Pan, *Memoires*, I, 163.

<sup>175</sup> Egret, *Pre-Rev.*, 344.

<sup>176</sup> Cadart, *Regime*, 153 ff., 163. Contemporary conservatives reproached the Crown for this action, see, for example, Brandes, *Polit. Betr.*, 22 ff; Bonald, *Traite du Min. Pub.*, V = *Oeuvres*, II, 131.

<sup>177</sup> Typical negotiations between First and Second regarding argumentation, For style and emphasis, see Freyberg, *Geschichte*, II, passim. For general information on the charters, see Unger, *Geschichte*, II, ff240. Texts of confirmations in Moser, *Von den Deutschen* (From the Germans). Landen, 949-1124.



## 4. Ideological leitmotifs of anti-absolutist conservatism

### a. Outlook and historical information on conservation

The discussion of the socio-political nature and theory of the status quo has already led us to the threshold of our actual topic, namely conservatism as a continuation and, in part, further development of the ideology of the *societas civilis* in the service of its ruling classes, which seek to assert themselves under the conditions of the budding modern statehood. The defense of the right or the legal conception of the *societas civilis* against the modern claim to sovereignty presupposes or entails certain theses which, apart from their respective degree of intellectual elaboration, carry the conservative worldview as a systematically conceived or at least reconstructable whole. The most important and most implicative of these theses are: that the *societas* precedes the government, and thus the natural and organic given, in time and status, over the activist will of partial instances; that the collective reason of the *societas*, crystallized in tradition and history, is logically and morally superior to all philosophical and political manifestations of individual or sectarian reason; that the administration of the commonwealth (both internally and in relation to other commonwealths), insofar as it is under the sign of the precepts of collective reason thus understood and leaves no dangerous room for the voluntarism of government, coincides with religion and morality *par excellence* and realizes the unity of ethics and politics; that *societas* and hierarchy are of the same nature and mean the same thing in the final analysis, ergo that the attacks of individual or sectarian reason against the latter must in the short or long run affect the former; and that, accordingly, the new state and the new society, from their genetic character, are opposed to the nature of man, who has always lived in *societas*. It is true that these theses do not appear in a coherent and theoretically practical form among the average conservative authors, since the aim is usually to deal with<sup>178</sup> current issues in a propagandistically effective way, so that the assumed theoretical principles are applied rather than stated. On the other hand, there are theoreticians, such as Fenelon, who see all sides of the complex of ideas just outlined at once and in context; and, moreover, in terms such as "law" and "justice," which are common even in the average public, the whole content of the theses referred to is very often expressed,

<sup>178</sup> Cf. Albertin's remarks on the character of French political literature at the beginning of the seventeenth century (Thought, 39), as well as Lemaire, Lois, 179f, and Thuau, Raison, (141

as can be readily inferred from the context. In view of this factual and textual situation, it is hardly possible to speak of a mute, unreflected traditionalism of the pre-revolutionary period. In the following, we will reconstruct the ideological principles of the already seriously threatened *societas civilis* on the basis of their most representative formulations, recalling both their rootedness in ancient scholastic thought and highlighting those aspects of them that enabled the seamless transition to the conservatism of the post-revolutionary period.

The conservatism of the pre-revolutionary period did not call itself „conservatism" or anything else. For those who are able to grasp thought structures formally and at the same time historically, this is completely insignificant. For even in the post-revolutionary period, the term "conservatism" was coined only after almost all the important theoretical works of the current so designated had already been written; moreover, the absence of that term in the preceding centuries is not due to specific shortcomings of the conservative political-theoretical consciousness, but rather to the fact that the age of great generalizations and singularizations did not begin until the 20th century<sup>18</sup>. The word "conservatio", however, was used many times earlier, but it first appeared in connection with the modern leitmotif of self-assertion, namely, the self-assertion of the state, which, at least since Machiavelli, has been conceived as a self-sufficient entity. Therefore, "conservation" does not necessarily have a socially conservative connotation, but can also mean, for example, the efforts of a prince to eliminate noble privileges for the sake of the general welfare of the state. It is interesting to note that the advocates of traditional law depend very much on "conservation," i.e., the self-assertion and continued existence of the community.

observation de ces anciennes lois"<sup>179</sup>, which makes it possible to distinguish between conservation

This connection is also underlined by the explicit reference to the role of the nobility, which was "par affection naturelle et par interet particulier" most concerned with the "conservation de l'Etat" or <sup>180</sup>even "le princip conservateur de l'Etat", while "le menu peuple plus enclin aux nouvelles"<sup>181</sup>. The social reference becomes even clearer in the not infrequent cases where the stancle refers to "conservation," "conservierung," or

<sup>179</sup> For example, Pierre d'Epinac, a representative of the clergy in the Etats Generaux of Blois (1576), quoted in Church, Const. Seyssel means more or less the same thing when he speaks of the "conservation" of the monarchy and the state (see, for example, Monarchy, etc.).142,159,203

speaks . As late as 1775, the Parisian parliament claimed that the "lois anciennes . . . les plus hees a la conservation de l'Etat" (Flammermont, Remonstrances, III, 262).

<sup>180</sup> S. Moreau, Bibi., I, 131, and Memoires de Conde, IV, 396 (Remonstrances of the Burgundian Stancle from 1563).

<sup>181</sup> Thus in the Annee litteraire of 1756, citing Carcassone, Montesquieu, 225.

In this context, the "preservation of our privileges" is sometimes juxtaposed with the initial "innovations"<sup>183</sup>, in<sup>182</sup> which we can see a - admittedly still vague - anticipation of the later dramatic juxtaposition of conservative reaction and progress. For this to happen, however, reaction and progress had to be hypostatized beforehand.

*b. The primacy of the natural-grown  
societas over the governmental power and  
the  
(spiit )scholastic contract theory*

In this section we will sketch the conception of the societas civilis as to its own origin and nature, as it was defended and developed under the circumstances of the budding modern statehood. The focus of our sketch will again be the contrast between the "natural" and the "arbitrary", which became more and more conscious in the 16th and 17th centuries. This is the contrast between societas, which is subject to eternal divine-natural laws, and governmental power, which, although originating in societas, threatens through its voluntarism and activism to divide the natural societas in order to replace the organic unity it represents with unnatural and therefore politically and morally illegitimate antagonisms and dualisms. The proof of the primacy of the societas over the power of government is made within the framework of a general theory of human coexistence in general, with particular emphasis on the old socio-political principle that the governing authority does not constitute an independent entity or adversary of the societas, but rather that organic part of it which bears special responsibility for the preservation of the traditionally given whole. Frie-conservative thought polemicizes above all against deviations of the governing authority from the normative precepts that are supposed to sustain this whole, as well as against the emergence of its own partial will that seeks to assert itself against the given whole in order to become the whole in its turn. With regard to the history of conservatism as a whole, it is irrelevant whether the part that wants to constitute itself as a whole is the ruling authority or a revolutionary sect; any attempt by partial instances to substitute the whole, to substitute their own subjective will for the objective will of the whole, is rejected. But now the whole consisted

<sup>182</sup> See, e.g., Griffiths (ed.), Repr. Gov., 224 (1555 text); Bar, Politics Pom merns, 442 (1649 text); Flammermont, Remonstrances, II, 568 (1766 text).

<sup>183</sup> For example, in a K.lage of the Stancle von Jillich und Berg to the Emperor (September 1628)

=,  
Acts of the Diet of Jillich-Berg, 1624-1653, 426.

In the view of the societas civilis, the oikos leaders were a part of the whole, while what appeared to be a part from the point of view of this whole, i.e., the government or the revolutionary sect, could in turn refer to another whole, i.e., to the sum of all individuals for its own socio-political purposes.

The first proof of the primacy of the societas over the respective governing power is the assertion that the societas is God-given and natural, that it is not constituted by any human, partial will, but only in it and through it is the constitution of a governing power possible. This principle was affirmed in the 16th century by many conservatives, and more systematically by the scholastics, who followed both Aristotle Ies184 and Thomas.<sup>185</sup> The starting point is the natural sociability of man, which is manifested at the various stages of the construction of the societas in varying, but mutually complementary forms. Thus, the immediate family expands into the domestic community, the oikos, which in turn represents the basic unit of the<sup>186</sup> communitas or societas. The components of the communitas can change, but it itself remains "perpetua et semper eadem"<sup>187</sup>, because it is<sup>188</sup> not an artificial product, but natural. The part of human will in the creation of the communitas is neither small nor dispensable, since men, guided by their reason, see in the communitas the natural framework for the compensation of their biological deficiencies and for the satisfaction of their (higher) needs, and on the basis of this insight they agree with each other to form a community comprising several households. But this agreement is not an act which could have been omitted, and therefore one can only speak of a contract in a free sense, if the concept of contract includes the absolute voluntariness of the contracting parties. People are forced to enter into a contract because of their innate, i.e. God-given and -willed sociability, so that this *must* rather be understood as an inevitable practical realization of the social instinct. Already Thomas points out this double aspect of the foundation of a communitas or societas as a seamless unity<sup>189</sup>, and in this he is followed by his late Scholastic scholars as well as by other theorists of the societas civilis in the 16th century.<sup>19-</sup> It<sup>0</sup> can be left undecided here, whether

<sup>184</sup> Dar iiber Sanchez Agesta, Concepto de! Estado, ff51

<sup>185</sup> Dariiber table leather, origin, ff113, and Carro, Soto, ff.75

<sup>186</sup> S. e.g. Suarez, De leg., 3, 1, 3-4, and Molina, De just., =11,22 I, C-112110 C.

<sup>187</sup> So Suarez, De leg, 1,7,7.

<sup>188</sup> Thus Vitoria, De pot. civ., =4 Obras, 155/6.

<sup>189</sup> Summa, 1-11, qu. art94., 2c, cf. qu. art. 63,1.

<sup>190</sup> See, e.g., Suarez, De leg., 3, 2, 1-6 u. 3, 3, 6, and De op. sex dierum, 5, 7, 3; Vitoria, De pot. civ., 4-5 u. 10 = Obras, 154ff., 165 f.; Hooker, Eccl. Pol., I, 10, =1 I, 239. The essential difference of this conception of the treaty from that of the more recent revolutionary Natural law also results from the fact that the opponents here are only the oikos leaders.

The main thing is that the human will, with all its assumed freedom, in reality carries out exactly what it is supposed to do<sup>191</sup>. The main thing is that the human will, which undoubtedly contributes its share to the communion, in reality, with all its assumed freedom, carries out exactly what nature and therefore also its creator and master have determined. The human consensus is integrated into a pre-existing order as its subjective expression and outgrowth<sup>192</sup>; will and contract therefore have a predetermined content and would not be valid if they were to turn against the overarching divine-natural order. In this sense it can be said that the originator of human *communitas* is God himself through an inner law which he has<sup>193</sup> implanted in man. Only this higher origin of the *communitas* can explain and justify its power of defense over its own members, which is already shown by the fact that no one can resist or escape its grasp, but also by the fact that it can impose the death penalty, which would be illegitimate if it were merely "a collectione particularum potestatum singulorum"<sup>194</sup>. This should have made clear that the *pactum societatis*, in the understanding of the theorists of the *societas civilis*, in no way has a bourgeois-legal sense and is thus *toto coelo* different from the revolutionary-natural-legal social contract. Important for us, however, is also its difference in character from the *pactum subiectionis* - a difference that clarifies the primacy of the *societas* over governmental power from another point of view.

According to the unanimous view of the theorists mentioned above, *auctoritas* and *potestas* belong to the essence of *societas* and are indispensable<sup>195</sup> for the achievement of its goals. From this point of view they are as God-given and -willed as the *societas* itself; the forms of socialization, which result from the realization of the social drive, form at the same time forms of *auctoritas* and *potestas*. *potestas viri in uxorum, parentum in filios, dominorum in servos*" etc.<sup>196</sup>. The rooting of *auctoritas* and *potestas* as such in the essence of *societas* and thus ultimately in the will of God does not mean, however, that the respective holder of governmental power derives his power directly from God. A distinction is made between *auctoritas* and *potestas* *per se* and their respective concrete formulation, and it is assumed that the latter cannot come into being and act in any other way than with the will of God.

are. This is particularly emphasized by Smith in his orthodox Aristotelian account of the formation of the Commonwealth (*De rep. Anglorum*, I, 10-12).

<sup>191</sup> See Remmen, *Staatslehre*, ff. 109187.; Kleinappl, Molina, 76f.;73, Mesnard, Esser, 627f..

<sup>192</sup> Cf. d'Addie, *L'idea*, f378.

<sup>193</sup> Thus, for example, Buchanan, *De iure regni*, 11.

<sup>194</sup> S. the analysis of Molina, *De just.*, =11,22 I, 114B-115 E.

<sup>195</sup> See, for example, Vitoria, *De pot. civ.*, 10-11, and Suarez, *De leg.*, 3, u1,4. 3,2,4.

<sup>196</sup> S. e.g. Molina, *De just. II*, =22, IC-110 112C.

The consent of the already existing *societas*, which concludes a *pactum subiectionis* with the chosen individual or collective bearer of the governmental power. *Auctoritas* and *potestas* do not originally reside in one part, but in the whole of the *communitas*, but they do so - according to the Aristotelian terminology of our scholastics - only as forms which receive their respective matter through the will of the *communitas*; if they are as such of divine origin, then on the other hand their localization on certain bearers remains a human act and human convention, which, by the way, explains<sup>197</sup> the diversity of the (legitimate) forms of government.

This diversity in itself testifies to the fact that the will of the members of the *societas* has a much wider scope when concluding the *pactum subiectionis* than when concluding the *pactum societatis*. The difference in the modalities of the state of the *pactum subiectionis*. The difference in the modalities of the conclusion of the two *pacta* in turn reflects a difference in the nature of their respective spheres of validity. The higher status of the *societas* compared to the governmental power, as it is manifested in the higher degree of necessity of the former, does not mean, of course, that the *societas* could get along without *auctoritas* and *potestas* as such; but it is not fundamentally dependent on any special form of government, while all (legitimate) forms of government without exception presuppose the one and independent form of the *societas*. The idea that the structure of the *societas* depends on the power of government, that a change in the form of government or a certain exercise of governmental power must therefore entail a more or less radical transformation of the *societas*, is completely alien to the theorists of the *societas civilis*. Since the concrete forms of *auctoritas* and *potestas* presuppose the *societas* in its unchangeable divine-national essence, the *pactum subiectionis* does not require a unilateral submission of the members of the *societas* to the power of the government, but rather a submission of all sides to the law, which is the specific task of the government. It is at this point that the opposition of the conservative conception to the modern idea of sovereignty comes out most clearly. And for this very reason the essential difference between *pactum societatis* and *pactum subiectionis* is blurred precisely where the modern idea of sovereignty is expressed in full awareness of its theoretical presuppositions and consequences: in Hobbes the two *pacta* coincide out of inner logical necessity.

From the preceding analysis it becomes clear why the contract theory, when presented with revolutionary intent, invokes the *pactum societatis*,

<sup>197</sup> S. Suarez, *De leg.* 3,2,3 ff; 3,3,2-4 u. 7 ff; 3, 4, 1-5. Of the non-scholastic authors remains representative Hooker, *Eccl. Pol.*, esp. VII, = 2,6III, Cf345.. the analysis of the Bowe, *Origin*, 29 ff, 43/4, 92 ff, and Arnold, *Be llarmin*. Dall Suarez Vitoria misunderstands and that both authors are basically of one opinion on this fundamental question, was already shown by Soder, *Idee*, and 47, Hamilton, *Pol. Thought*, 39.37,

while its conservative use foregrounds the pactum subiectionis. Both pacts are, of course, fictions, but the fiction of the pactum subiectionis was rooted in the practice of feudalism and the status quo, and thus its anti-absolutist authors and representatives could feel legitimized<sup>198</sup> by tradition and history. The strong historical character of the conservative appeal to the pactum subiectionis was,<sup>199</sup> of course, due to the fact that here a *societas* of any kind was presupposed. This can already be seen in the monarchical documents of the sixteenth century, which do not say much about the origin of the *societas* and instead speak of treaties concluded between a people already living in *societas* and the authorities (elected by the people). They are therefore rather a solemn sealing of the existing traditional order than a voluntary act of civil law in the modern sense; Precisely because the individualistic element is lacking in them, the usual riposte of liberal-democratic contract theory to the constitutional process of society hardly occurs<sup>200</sup> here. The pamphleteers of the Fronde, who borrowed scholastic ideas from second- or third-hand sources, above all from monarchomachic literature, made the contract of rule their sole subject, reminding<sup>201</sup> the king of his obligations to uphold traditional law, which were automatically assumed when he came to power. In Germany, too, the idea of the contract plays a key ideological role in the disputes between the stancels and the princes, and the contract of dominion is always meant. It is based on the principle of equality of protection and obedience as well as the equality of the partners, and as a *conventio* it stands in contrast to any *impositio*, i.e. any coercion<sup>202</sup>. Treaties would form the basis of the national constitution, and privileges were also granted by contract, i.e. as compensation for services rendered, and therefore could not be granted unilaterally.

<sup>198</sup> Naf, *Herrschaftsverträge*, 43 ff, and Staat, 115f; Oestreich, *Geist*, 159 ff; Figgis, *Pol. Thought*, 169ff

<sup>199</sup> *Histoire*, I, 156.

<sup>200</sup> Cf. the good analysis by Dennert, *Ursprung*, and 107, see also Atger, *Essai*, f105. Atger thinks, Mariana would exceptionally also deal with the pactum societatis, which d'Addia (*L'idea*, 476, 513) denies with good reasons. Brutus (*Vindiciae*, III = p. 184) speaks of two pacts subiectionis, the first of which regulates the election of the king (God elects the King - but by the people), while the latter obliges the King to respect the law and is exclusively a matter for the people and the King. Of course, this does not change the basic scheme of conservative thinking on this issue.

<sup>201</sup> To summarize, see. Kotowitsch, *Staatstheorien*, ff89, and Doolin, *Fronde*, 158f.

<sup>202</sup> See, for example, Lindeck, *Einfluß*, f31., and Back, *Herzog*, ff.197

can be<sup>203</sup> taken into account. The insistence with which Count von Finckenstein still asserts the 1788 "essence of the feudal contract"<sup>204</sup>, speaks volumes about the long-term historical impact of the described theories of the relations between *societas* and governmental power and at the same time vividly demonstrates their connection with the conservative movement after 1789.

The naturalness and structural indivisibility of the society, in comparison to the choice and changeability of the form of government, as well as the related difference in character and status between pactum societatis and pactum subiectionis, are not the only theoretical supports for the primacy of the society and the organic whole over the power of government and the voluntary part. In addition, there is the view that the governmental power as *vis coerciva*, which must force the egoistic and selfish people, if necessary by force and punishment, to obey the legal rules of the society, has actually become necessary only after the fall of the *siinden*, eventus peccati. In concrete terms, this means that the governmental power has to perform subaltern, albeit indispensable, tasks, i.e. to do the dirty work within the society, while the higher ethical goals, for the sake of which the society exists, are entrusted to the spiritual power, namely the church. The Augustinian doctrine of the origin of governmental power was emphasized by the Pope at the time of the Investiture Controversy precisely with the intention of reminding the secular or imperial power of the limits of its essence and its capacities<sup>205</sup>; the same doctrine was often used in<sup>206</sup> the unremitting medieval struggle against the figure of the "tyrant". The mediation of the Augustinian with the Aristotelian conception, as Thomas undertook it, resulted in the construction that already in the state of innocence there had been a *potestas directiva*, but the *potestas coerciva* had in fact arisen only as a result of the *siindenfall*<sup>207</sup>. This construction, which was also adopted by the Spatscholastics<sup>208</sup>, made the secular *auctoritas* and *potestas* appear in a more friendly light, but not to the extent that the superiority of spiritual power could have been endangered. In the case of the Spatschola stikers, the purely secular character of the governmental power is not elaborated in a sacularizing sense, but, on the contrary, with the intention of strengthening the ethic and spiritual values of the people.

<sup>203</sup> See the unanimous concern of the Prussian Stancel of March 27, 1662 and their declaration of March 3, 1661/2. 1661 = *Urkunden und Actenstücke*, XVI, 23, 25, 41f., 47 u. XV, 670. The Kurfürst used to counter that his office was given to him <by God and not <by contract and that *salus provinciae* was more important than privileges (*Urkunden*, XVI, 782).699,

<sup>204</sup> S. his *Denkschrift über die Lage des markischen Adels*, zit. Vetter, *Kurm. Adel*, f24.

<sup>205</sup> Cf. Gierke, *Althusius*, ff.62

<sup>206</sup> Carlyle-Carlyle, *History*, III, 94, ff160. u. IV, ff.201,286

<sup>207</sup> *Summa Theol.*, I, qu. art. 96.4.

<sup>208</sup> S. Suarez's discussion of Augustinian doctrine, *De leg.*, I, 3,12; cf. Costello's analysis, *Pol. Phil. of Molina*, ff.30



The thesis of the only indirect divine sanction of the king elected by the people according to the pactum subiectionis aimed at proving the primacy of the pope, who was the only one to receive his office directly from God<sup>209</sup>. In this way, theological authors contributed considerably to the consolidation and spread of the conviction that governmental power was something subaltern, which had to serve greater and nobler purposes, and fell prey to hubris as soon as it developed an independent will and action. In this way, the Augustinian tradition remained effective - and it even celebrated a conscious revival after 1800, when counter-revolutionary conservatives saw<sup>210</sup> in the modern sovereign state the spawn of evil par excellence. By the state in the bad sense, however, they understood the activist and voluntarist power of government in a time when the state already meant the opposite of society, whereas for the anti-absolutist conservatives of the sixteenth and seventeenth centuries the state could be nothing other than the *societas*. One reason why the meaning of their texts, and especially their fundamental distinction between *societas* and governmental power, was often not perceived is that "*societas*" was translated as "state" and then "state" was understood (unconsciously) in modern terms.

We have already noted that in the conception of the *societas civilis* the pactum subiectionis, like the pactum societatis, lacks voluntaristic features; for the latter, too, does not unilaterally give effect to subjective intentions, but rather articulates the common obligation of the relevant factors of the *societas* to respect the traditional order in regulating the modalities of their mutual relations. In contrast to the contract as it appears in the liberal-democratic natural law, the pactum does not create a right where none existed before, but it is concluded on<sup>211</sup> the basis of an already existing and eternally valid right. This, of course, follows from the supreme principle of the legal conception of the *societas civilis*, according to which human law can be binding only insofar as it represents<sup>212</sup> an interpretation or application of the divine, so that obedience to the law and obedience to God are<sup>213</sup> one and the same. The higher status of the *societas* in relation to the governmental or royal power appears precisely in the fact that the latter remains bound to the commandments of the independent divine-national law, which establishes the structure and life of a healthy *societas*.

<sup>209</sup> See, e.g., Suarez, *Def. Fid.*, 3, 2, 1, and Soto, *De just.*, IV, 4,1 = f. 107v.-108r. Cf. the letter from the widow of the murdered Count of Guise to Pope Sixtus V (February 1589), cited in Baumgartner, *Radical Reactionaries*, 108.

<sup>210</sup> S. u. Chap. III, Sect. a4.

<sup>211</sup> Cf. the remarks of Laures, Mariana, 58 f., and the additional aspect rightly emphasized by Lissarrague (*Teoria del Poder*, 45).

<sup>212</sup> Soto, *De just.*, =1,6,4 f. r18. (center).

<sup>213</sup> Brutus, *Vindiciae*, III = S. 138.

and determines. Laws therefore do not receive their binding force from the power position of their authors, but from a higher authority<sup>214</sup>. They are not orders or decisions of a necessarily limited subject, subject to random pressure and driven to and fro by passions. As one Frondeur wrote with reference to Aristotle: "L'empire de la lay ... c'est quelque chose de divin, de permanent et d'incorrutable; !'empire absolu de l'homme seul est brutal"<sup>215</sup>.

From this point of view, the opposition of objective law and subjective command is a paraphrase of the desired subjection of the governmental power to the *societas*. These traditional topoi received a juridical expression through the theory of *leges fundamentales*, which was<sup>216</sup> systematized especially since the second half of the 16th century as a result of the growing mistrust of the *societas* against the (absolutist) governmental power and was used until the late 18th century. It states that there are inviolable laws on which socio-political life has been based since time immemorial and according to which all individual governmental decisions and measures must be guided. Accordingly, a distinction is made between "jois du royaume" and "leis du roi," the former being independent, while the latter can be modified<sup>217</sup> "selon la diversite des temps et des affaires. In the language of the preußische Stancle, "national constitutions" or "fundamental national constitutions" are

The latter have absolute priority and, as is somewhat hypocritically claimed, cannot<sup>2</sup> even be changed by the stands themselves.<sup>8</sup> Now the Stancle, when they speak of fundamen-

<sup>214</sup> S. the characteristic formulations of Hooker, *Eccl. Pol.*, VIII, 122 = III, 352 u. I, =10,8 I, Cf245.. Brutus, *Vindiciae*, III = S. 141.

<sup>215</sup> Moreau, Choix, II, 462.

<sup>216</sup> Lemaire, *Lois*, 71; Dennert, *Ursprung*, 16ff.

<sup>217</sup> After a formulation by Joly, *Traite*, 129. O ber the same distinction, as it is made towards the end of the 16. See Lemaire, *Lois*, 105 f. Similar statements from the same period are still referred to by the Parisian Parliament in its remonstrance of the same year. 24.6. 1763 = Flammermont, II, Daselbst342. ist von „la force irrefragable des lois immuables par leur nature, constitutives de l'economie de l'Etat" the speech. Cf. the remonstrances of the 26. 7.1718 u.9. 4.1753 = Flammermont, I, Ober95,568. das Selbstverstandnis des (Pariser) Parliament as hiiter of the Fundamentalgesetze s. Lemaire, *Lois*, 166ff; Brissaud, *Un liberal*, 51f.; Kotowitsch, *Theories of the State*, 107; Doolin, *Fronde*, 68 ff; Bickart, *Parlements*, 33 ff, 86 ff; 115 ff; Egret, Louis X V, 48, 90 ff On the friendly or hostile antagonism between parliaments and Estates General in this respect s. Bickart, *Parlements*, 249 ff, and Carcassone, Montesquieu, 251 f. On the jus convocandi status as a permanent point of contention in connection with the question of fundamental laws see, among others, Back, Herzog, 259 ff; Carsten, *Princes*, 151, 156, 164; Breysig, *Entwicklung*, 69, 82; Koser, *Zur preuß. Gesch.* 338. On the way in which the absolutists sought to turn the concept of fundamental laws in their favor through reinterpretations, see Albertini, *Denken*, 148.61,

<sup>218</sup> S. the united concern of the Stancle of 27. 3. 1662 and their declaration of 31. 1. =1663 *Urkunden und Actenstücke*, XVI, f25., 334.



The concept of *leges fundamentales*, however, remained vague, and this is what allowed its unlimited propagandistic use. Their number and practical scope of application were not precisely defined, and the question of their origin remained unclear. Their number and their precise field of application were not precisely determined, and the question of their origin remained unclear: sometimes they appeared as a customary law binding *Fiirst* and *Stancle* alike, and sometimes as the product of a general agreement between the two sides<sup>219</sup>. This, of course, reflects the ambiguity of traditional contract theory, as illustrated by the aforementioned difference in character between *pactum societatis* and *pactum subiectionis*.

The social-theoretical positions outlined above now merge into the practical political doctrine of the rights and duties of the actual holder of governmental power, namely the king. As said, this doctrine is based on the conviction that the king is a part of the whole<sup>220</sup> and should not try to make a whole out of the part he is by force. The unity of king and state, on which Boulainvilliers still insists<sup>221</sup>, means that the *societas civilis* must know no opposition, no separation between *populus* (as the epitome of the *oikos* leaders) and the power of government; king and people should together form<sup>222</sup> a "*corpus mysticum*" or a "*corps politique et mystique*". The spirit of the whole, the spirit of the eternal right, must prevail in everything that the royal power does. Basically, these are medieval commonplaces, which were partially rediscovered and updated in the 16th century, not without reason. They can be summarized<sup>223</sup> as follows. The "legitimate" ruler is the speaking law, he thinks and does nothing else than what the law commands, he interprets and applies this law, his original function (besides that of the war chief) is the judicial one, he legislates only on the basis of the existing law, he respects the life and property of his subjects and protects the "people" in the sense that he lets<sup>224</sup> them preserve their liberties. The subjugation of the governmental power to the *societas* is

<sup>219</sup> Zurn Obigen Back, Duke, ff159

<sup>220</sup> „*Princeps pars est reipublicae*", Suarez, *De leg.*3., 35,6.

<sup>221</sup> *Histoire*, I, 33.

<sup>222</sup> See, for example, the united concern of the preußische Stände vom 5.9.1674 *Urkunden und Actenstücke*, XVI, 809, as well as Coquille, *Discours des Etats de France* = I, A277. Cf. Suarez, *De leg.*1,4, , 19.

<sup>223</sup> Cf. section u2. 3b of this chapter.

<sup>224</sup> Typical formulations esp. in Brutus, *Vindiciae*, III = p. (118131,137,, 139,145, 150 f, 184ff, 221; Beza, *De iure*, VI, p. 42; Buchanan, *De iure regni*, 20;19, Smith, *De rep.*

The idea that kings existed for the sake of the people and not vice versa, that they owed everything they possessed to the "people," especially since they were originally elected by the "people," even if the people had<sup>225</sup> acted on a divine mandate, was also demanded in the form of a reminder. The thesis of the explicit or (in the case of hereditary homage) implicit electability of the kings, however, intensified the disagreement about the content of the *pactum subiectionis*, since now - especially with regard to a possible use of the right of resistance - it had to be examined and determined which part of the potestas originally invested in the *societas* had been transferred to the king and to what extent the *societas* had further reserved any rights for itself in this transfer. Conservatives held various views on this, which need<sup>226</sup> not concern us here in detail. It is only to be noted that this shows<sup>227</sup> the concrete situation of the author in question as well as the extent of the respective willingness to compromise with the budding modern statehood.

The relevance of this conception of the nature of society and its relationship to governmental power for the later development of conservative ideology can be illustrated by the example of Fenelon, in whom this conception is simultaneously directed against two enemies, i.e. against both absolutism and the egalitarian-revolutionary natural law that was already clearly recognizable in its outlines at the end of the nineteenth century<sup>17</sup>. Because of this double polemical aim, motifs that were particularly close to the hearts of the conservative authors around 1800 already sound here. As a continuator of the Aristotelian scholastic tradition, Fenelon believes in the sociability of man, which he sees as a function of both biological deficiencies and higher spiritual needs.

Anglorum, II, 3; Boulainvilliers, *Histoire*, I, 27, 31, 55, 100; Joly, *Traite*, 47; Declaration of the entire Preußian Stände of 31. 1. 1663 = *Urkunden und Actenstücke*, XVI, 344. Good summaries of the views on this matter by Boucher, the main theorist of the Catholic League, offer Labitte, *Predicateurs*, 166 ff, and Baumgartner, *Radical Reactionaries*, ff.127

<sup>225</sup> S. already the speech of Philippe Pot in the *Etats Generaux* of Tours (1483) = Picot, *Histoire*, I, 410ff, and Brutus, *Vindiciae*, III = pp. 96, 99, 106; Hotman, *Francogallia*, I, VI, VII, XIX = p. 398;154,220,234, Coquille, *Questions etc.*, I u. CCCXI = II, p. 2,125,332; Buchanan, *De iure regni*, 15ff; Sturmberger, *Tschernembl*, 343; Moreau, *Bibliographie*, 11, 363; Kotowitsch, *Staatstheorien*, 114 (; Jo ly, *Traite*, 41f( and Brissaud, *Un liberal*, 15ff. As late as two years after the French Revolution, the Bohemian Estates invoked the election of the Coni ge as a reason for their obligations, see *Histor. Actenstücke*, 2nd volume, 69 ff. For the prehistory of this view since the Patristics, see Lanseros, *Autoridad Civil*, 189ff.

<sup>226</sup> Characteristic statements about this in Molina, *De just .*=11,23 I, 118DE; Beza, *De iure*, VI = p. 68; Hooker, *Eccl. Pol.*, VIII, 8-102, = III, 347 ff; Buchanan, *De iure regni*, 80; Moreau, *Choix*, I, 451. Cf. the analyses of the late scholastic views on this question together with their further development into the 19th century in Remmen, *Staatslehre*, 188ff; Laures, *Mariana*, 236; Bowe, *Origin*, 56 ff; Costello, *Molina*, 40 ff; Lissarague, *Teoria del Poder*, ff50; Lanseros, *Autoridad Civil*, 235ff.

<sup>227</sup> See section 3a above.

He also describes the structure of the *communitas* according to the traditional scheme, placing the family or extended family at the beginning and then tracing its ramifications and the subsequent connections. Interestingly, he tries to interpret the necessity of an "autorite souveraine" not in a thomistic but in an augustinian way, pointing to the fall of the Siena and the end of the golden age<sup>228</sup>: after the already long and painful experiences with absolutism, governmental power would now appear more as a necessary evil (not least in view of the dangers from below, against which Fenelon was very sensitive<sup>229</sup>) than as a *giitiger Hiiter* of a healthy organic *societas*. Not only does this bring Fenelon closer to the later counter-revolutionary conservatism, but also when he directly opposes the traditional theory of the origin of the *societas* to the egalitarian contract theory. For he knows and formulates in full consciousness and in all clarity the alternative. There are two great political schools, he writes; the one maintains that men were born equal and free, that they founded their communities by contract and "pour leur commodite particuliere," and that they appointed and dismissed their government as they wished; but the other, to which he adds

itself pays, assume „qu'antecedemment *a* tout contrat libre, nous naissons tous plus ou moins dependants, inegaux, et membres de quelque societe *a* qui nous nous devons; que la forme du gouvernement etant une fois etablie, ii n'est pas permis aux particuliers de la troubler"<sup>230</sup>. Explicitly or implicitly, these sentences, published in 1721, contain everything fundamental that conservatives countered revolutionary theory with after 1789.

### c. *The Unity of Ethics and Politics and the State Reason*

For the legal conception of the *societas civilis*, the unity of ethics and politics was self-evident: if law, under whose aegis the administration of *societas*, i.e. politics in the traditional sense, stands, is of divine-natiir origin, then it coincides eo ipso with ethics, which likewise originates from God; for divine truths not only do not contradict each other, but are also, according to their essence and status, equally important and equally binding. Politics based on the legal conception of *societas civilis* and ethics thus pursue the same purpose, for the sake of which men were ordained by God to live in *societas*. In this spirit, the ideologists of the *societas civilis* emphasize again and again, that this is first of all

has to<sup>231</sup> fulfill an ethical task. This was assumed in accordance with Aristotle, but with the ideological dominance of Christianity the concrete content of this task could not be meant in an Aristotelian-pagan way. The practical monopolization of ideology by Christianity meant that its representatives had to have the last word in determining the highest ethical purpose of society. This was, of course, a very important weapon in the struggle of the medieval church against its secular competitors, for the unity of politics with a Christianly defined ethics implied that struggles over this question - and it was practically universal - had necessarily to be fought on theological terrain. The absence of any other coherent ideology also meant that non-theologians had to argue in the language of Christianity, not only in their struggles with the Church, but also in their struggles against each other. Thus, the nobility had to accuse the royal power of violating the divine commandments and the Christian ethics, if they wanted to complain about violations of the law, i.e. of their own privileges. Thus, it was a social and ideological necessity that the *societas'* effort to keep governmental power under control was articulated in the basic principle of the unity of ethics or religion and politics. Concrete applications of this principle in the 16th century were the theses that the king must submit to God and his commandments, thus distinguishing himself from the self-willed tyrant, and that the subjects<sup>232</sup>, in turn, must obey divine rather than human laws, thus granting them the right of passive or active resistance. The meaning of the required conformity of politics and Christian ethics is that the bearer of governmental power does not pursue a fundamentally new but a traditional policy, which is as old and true as Christian ethics; the principle that government does not create law is thus logically connected with the unity of politics and ethics - from which, of course, the important implication arises that the separation of ethics and politics from each other is accompanied by the possibility of a voluntaristic creation of law.

Since law, to which governmental power remains subject, guarantees the existing social hierarchy and thus the domination of certain groups within the *societas*, the defense of the unity of ethics and politics, like the defense of law in general, amounts to the defense of that domination. It is not by chance that the energetic enemies of Machiavellianism - of this radical separation of ethics and politics - point to the first step in the direction of the right.

<sup>231</sup> See, e.g., Thomas, *Summa*, I-11, qu. art 92,1; qu. 96, art 2-3; qu. 100, art. 1, ob. 2; Suarez, *De leg.* 1, , 6,18.

<sup>232</sup> Characteristic formulations in Brutus, *Vindiciae*, I = p. f22, 37, 42; Beza, *De iure*, I= S. 29( ; Ribadaneyra, *Tratado* , II, = 9S. 260.

<sup>228</sup> Zurn Obigen s. *Essai sur le gouv. civil*, III-VU = VII, 108-113.

<sup>229</sup> See above, section b3, note u10. 111.

<sup>230</sup> *Essai sur le gouv. civil*, I = VII, 104.

The "bienes de la Iglesia" and the "„haziendasde su subdi tos" are sacrosanct<sup>233</sup> or they oppose the taxation of the nobility and consider the destruction of the aristocracy as the main goal of Machiavellianism; because "Jes gentils hommes ... sont grands ennemis d'un tel estat politique que celui que Machiavel a basti par ses escrits, c'est à dire d'un estat tyrannique"<sup>234</sup>. Among the concrete In the conditions of the *societas civilis*, the unity of ethics and politics was interpreted in a concrete way that differs radically from the liberal or democratic conception of this same unity that is common today. To the extent that it ideologically legitimized the maintenance of the social hierarchy of the time on the basis of the entanglement of governmental power and *societas* (as the epitome of the *oikos-fiih rer*), the "Machiavellian" separation of ethics and politics from each other had to go hand in hand with the emergence of the dualism of state and society, whereby politics was to become a matter for the state, while ethics was to become a private matter for the members of a largely depoliticized society. Machiavelli's separation of ethics and politics (with a simultaneous reinterpretation of the latter, see below) implied precisely this, and this is how it was understood by all sides. For both the absolutists, at the latest in the 17th century, openly professed the view that politics and ethics, or public and private morality, were two different things<sup>235</sup>, and their opponents also held the same conviction against them, namely "that politics and the piece chretienne are incompatible, ..... qu'il y a une conscience pour Jes affaires de l'Etat et une pour les affaires particulieres"<sup>236</sup>. The insight that the separation of ethics and politics would be accompanied by a division of the *societas*, since a governmental power that detaches itself from ethics and reclaims (reinterpreted) politics for itself would have to treat the *oikos* leaders with hostility - this insight gradually materializes in the increasingly frequent and louder complaints, Machiavelli and the Machiavellians would substitute mutual trust and violence for the natural patriarchal relationship between ruler and subject<sup>237</sup>, thus misunderstanding the essence of society, which was not based on violence, as they believed, but on human needs and love<sup>238</sup>. In this sense, Richelieu's conservative enemies accuse the cardinal of reducing everything to "force" and "authorite".

<sup>233</sup> Ribadaneyra, *Tratado*, I, 37-38 = pp. 203ff; II, =9 pp. 260.

<sup>234</sup> Gentillet, *Discours* 148., 527, 528.

<sup>235</sup> Evidence in Thuau, *Raison*, Cf 184, 205, 323. Church, Richelieu, f199.

<sup>236</sup> Thus Jaully über Mazarin, zit. Chere!, *Pensee*, 125. The question was not different in England, s. Raab, *English Face*, esp. ff. 7787ff.

<sup>237</sup> Thus an anonymous *Ligist* in a published 1589 pamphlet = *Memoires de la Ligue*, III, 527.

<sup>238</sup> Thus an anonymous *ligist* in a pamphlet also published in 1589, cited in Baumgartner, *Radical Reactionaries*, 168.

ren<sup>239</sup>. From the conservative point of view, the division of the *societas* was caused by the fact that the First (detached from the precepts of Christian ethics) tried to put the whole area of the public or the political under his own monopoly of interpretation and violence, which, of course, was presented as a mere satisfaction of base instincts. As one among many, Fenelon therefore asks the First whether he does not call necessity of the *Etat* or needs of the *Etat* precisely what serves<sup>240</sup> his own ambitions.

The separation of ethics or religion and politics from each other, the monopolization and at the same time redefinition of the political by the power of government and the concomitant division of society, which ended with the dualism of state and society, were first and clearly understood by conservatives in their unity and apostrophized as Machiavellianism. The shocking effect of<sup>241</sup> the Florentine's work and its presentation of the concept of the state reason *avant la lettre* could not have caused this sharpening of consciousness alone. There was a widespread feeling that this work was itself a symptom of deeper changes and transformations and that Christianity was facing hitherto unknown problems, unprecedented crises and upheavals<sup>242</sup>. The actual upheaval found its conceptual expression in the radical reinterpretation of "politics" itself. If until then this term had meant the wise and judicious administration of society in the spirit of natural divine law and the tradition shaped by it, it came to mean only that it served to designate the voluntaristic endeavor of governmental power to autonomize itself from society and its law by all means and to shape it according to its own subjective ideas. The conservatives registered this radical reinterpretation and<sup>243</sup> they themselves unintentionally contributed to its consolidation and spread by speaking of the machiavellist "politicis" constantly, though admittedly in a pejorative sense<sup>244</sup>. They wanted to stay with the traditional use of the term.

<sup>239</sup> Thus M. de Morgues, citing Thuau, *Raison*, f127.

<sup>240</sup> Examen de conscience . . . III § XIV = VII, 88.

<sup>241</sup> See Polin, *Le concept*. The necessary information on the most important figures and works of conservative anti-Machiavellism can be found in Mattei, *Dal premachiavellismo* (1955), esp. 97 ff., and *Dal premachiavellismo* (1969), esp. 154ff., 221 ff.; Toffanin, Machiavelli, 87 ff. See also the works of Benoist, Tom masini, Chere! and Sorrentino mentioned in the bibliography. The related Tacitism debate is reconstructed by Toffanin, Machiavelli, 127 ff. (chs. VI-IX); Stackelberg, Tacitus, esp. 5 ff. , 63ff., ff120., ff131.; Thuau, *Raison*, ff18933.

<sup>242</sup> The effects of this feeling in the century 16. are well emphasized by Lutz, *Ragione*, esp4510.

<sup>243</sup> See, for example, the anonymous "Description du Politique" cited by Thuau (*Raison*, 150).

<sup>244</sup> For some examples among countless, see Mattei, *Dal premachiavellismo* (1969), 234, 236, 237; Tommasini, *Vita*, I, 5 ann 1, 22 ann 17. 1, 23. See Barner, *Barockrhetorik*, 141f.

and therefore they also spoke of Machiavelli's "pseudo-politica"<sup>245</sup> or proposed neologisms such as "neopolitia" to designate the new sense of "poli tica," but in the new situation they could only succeed in<sup>246</sup> an unmistakable demarcation from the latter by using adjectives such as "christiana" or "sacra" (sc. politica). The specific difference between the old and the new concept of politics was thus sought not least in the decisive presence of the religious in the former. On the contrary, the new politics, devoid of Christian ethics, appeared as the embodiment of atheism and the spawn of hell. In a sentence that is also characteristic of the history of the concept of politics, Ribadaneira wrote: „La peor y mas abominable secta que Satanás ha inventado, es una de los que llaman Politicos (aunque ellos son indignos de tal nombre) salida de! Inferno"<sup>247</sup>. Others thought that Machiavelli's work was "Satanæ digito scriptum" and that the author himself was "Satanæ filius"<sup>248</sup> or "sceleratum Satanæ organum" and "diabo licarum constitution um faber optimus"<sup>249</sup>. In general, there was no doubt that the politici were<sup>250</sup> not just heretics, but atheists, atheists par excellence, which is why they were<sup>251</sup> called „atheopolitici" for short. These statements, when understood in all their implications, recall the later conservative discovery of the satanic character of the Revolution of 1789<sup>252</sup>, for Machiavellian absolutism and liberal-democratic revolution appeared, from the ideological perspective of the *societas civilis*, equally as hubris, as rebellion against the divine order: the first to oppose it was<sup>253</sup> none other than Satan himself.

The same train of thought led to the view held at the time that the saus-

<sup>245</sup> So<sup>45</sup> in the title of a work of the German Jesuit Chr. Peller, see. Sorrentino, *Antimachiavellismo*, 136.

<sup>246</sup> For example, in the titles of works by various authors, such as Clement or Tommasi, see Sorrentino, *Antimachiavellismo*, f132, f.134

<sup>247</sup> *Tratado*, Epist. Ded., 5.

<sup>248</sup> Thus Pole, *Apologia ad Carolum*, ...XXX=55 f

<sup>249</sup> S. Benoist, *Influence*, 169f, cf181.. 175; ders, *Machiavellisme*, III, 87.

<sup>250</sup> Suarez, *De leg.*, and 3,12,5, Gentillet, *Discours*, 156: „!es Machiavellistes (c'est-a-dire !es Atheistes des nostre temps)".

<sup>251</sup> Thus the Jesuit Clement, quoted in Mattei, *Dal premachiavellismo* (1969), 244.

<sup>252</sup> S. u. chap. 111, sect. a3, a6.

<sup>253</sup> In the Jh.17. statements are made, which the after gelauf1800 become connection.

The latter anticipated the combination of social and metaphysical revolution. Thus a pamphleteer at the time of the Fronde wrote that republics were "des imitations ou des expressions parfaites de la revoke des anges" (Moreau, Bibi., I, 31 f). The Jesuit Contzen writes the sentence reminiscent of Dostoevsky: If there is no God, then everything is allowed" (quoted in Thuau, *Raison*, 103).

And Seckendorff (*Christen-Staat*, Add. to I, § 1= 15p. 613) defines atheism as.

Precedence of the Irdjschen before the Giittlichen, as basically animal search for Gli.ickse ligkeit in this world. This worldly-anti-Ascetic eudamonism, which was connected with the assumption of human rights and therefore in the Vergiitlichung of the human and

<sup>254</sup> For reason of state means that the worldly (in this case the state, in the sense of the voluntaristic power of government) has its own needs and its own logic, which partly presupposed the separation of (religiously defined) ethics and politics and partly brought it to its logical end. The existence and activity of an independent state reason thus testified that not everything in this world had to be under the aegis of God. The autonomization of the human being through the state reason also had a second, equally important aspect. The state reason not only implied that the state or the worldly has its own reason and thus its own value, but also that there is a reason that can and wants to detach itself from all other considerations and perspectives in order to devote all its efforts exclusively to the state or the worldly. But since the state attained its autonomy precisely through the separation of ethics and politics, the reason that was to serve it also had to be purely political reason, which meant two things: purely worldly-human and purely rational. The autonomization of man thus went hand in hand with the detachment of his reason from the ethico-religious and the discovery of the naked purposive reason; since reason guided by God could never and should never have abandoned the unity of ethics and politics, the abandonment of that unity had to be the work of reason turned in on itself alone. This dramatic transformation of the concept of<sup>255</sup> reason, which until then had always and necessarily had a significant normative dimension, was understood precisely in connection with the problem of the state reason. Thus, the coupling of state and reason in the expression *ragione di stato* was disputed with the argument that a reason detached from God did not deserve this name at all; *ratio* always had to do only with *ius*, not with *status* - and *ius*, in turn, had to have its

preserving its original ethical sense, from which it follows that a *ius dom ina*

<sup>256</sup> It was, of course, obvious to reject outright any *ragione di stato* and to continue to recommend the observance of natural divine law in the sense of tradition, as did authors who, in opposition to the new conception of the political, adhered exclusively to<sup>257</sup> the Aristotelian concept of politics. In view of the factual enforcement of the *ter minus*, however, another tactic seemed more effective, namely that of distinguishing between good and bad, true and false reason of state, and of condemning the former with the latter.

The conservatives around 1800 also regarded atheism as a characteristic feature of a revolutionary worldview (see below, chap., sect. a1112,3).

<sup>254</sup> S., the sentence of Melliet quoted by Chere! (Pensee, 101) quoted by Melliet.

<sup>255</sup> Dari.iber cf. Kondylis, *Aufklärung*, ff,153 ff.325

<sup>256</sup> Evidence in Mattei, *Problema*, VI, 417; IX, 370ff.; XI, 171.

<sup>257</sup> Evidence in Mattei, *Problema*, VIII, 455ff., esp. f.459



<sup>8</sup>The<sup>25</sup> good state reason was that the common interest had natural priority over the personal interest of the prince; the attitude of the prince to religion and the church served as an important criterion for the decision of the state.

The question of whether the common interest is being<sup>259</sup> served. Significantly the new situation and the new constraints is the fact that the conservatives not only had to use the ominous expression, but also, in their own view, did not always make concessions to it.

The new political system was able to avoid the logic of secular expediency - which only strengthened<sup>260</sup> the nostalgia for the ambiguity of the old concept of politics.

Use of favorite absolutist words on the part of conservatives no

It only made the question of interpretation more acute and the related question of power more visible.<sup>261</sup>

The autonomization of the secular contained in the concept of the state reason - in the double dimension of the state and human reason - showed itself from its practical aspect in the endeavor of the nascent modern state to subject religion and church to its laws or even to harness them for its goals. Thus, from the secular point of view of the state, it was not their truth but their usefulness that was most important. The primacy of the state and the instrumentalization of religion went hand in hand, which is why the conservatives also defended the primacy of ethical and religious truth against the principle of usefulness as well as against the principle of the rule of law.

<las principle of preservation of the state (in the new sense) defend at all costs. mul3ten<sup>262</sup>. But the primacy of religion was also threatened in another way. We have already explained why the separation of ethics and politics had to be combined with the separation of the private and the public. Where the new state succeeded in dissolving the unity of *societas* and governmental power, the individual, now independent of the state, had to obey civil laws, no matter what he believed in *foro interno*; legality and morality thus fell apart. This meant, however, that religious belief was a matter for the individual.

<sup>258</sup> Typically Ribadaneira, *Tratado*, Other 20. evidence in Church, Richelieu, f42., 65 et seq; Thuau, *Raison*, ff; 116 Mattei, *Problema*, VII, f448.

<sup>259</sup> Evidence in Mattei, *Problema*, VI, 412f.

<sup>260</sup> See the presentation of Botero's and Ammirato's views in Mattei, *Problema*, III, 28f., 33f.; IV, 343f., 339, 352; VI, 408f., 415.

<sup>261</sup> It is only to be hunted, not in the same way by E. Ch. D. and the *Standen* *salus publica consideret* is". Thus in the United Concerns of the Prussian Stangle of 5. 9. 1674 = *Urkunden und Actenstücke*, XVI, 809. Moser states the principle: The best of the state is the supreme law" is valid only under the condition that the definition of this best is not exclusively a matter of the regent (*Von den Deutschen Landen*, 1187).

<sup>262</sup> Typical statements in Ribadaneira, *Tratado*, (13Al *Christiano Lector*) u. = 1, 1p. 25; *Memoires de la Ligue*, III, 525 (ano nyme pamphlet from 1589). An observer at the time defined the *politiques* as follows: "ceux qui joignent la religion a l'etat et non l'etat a la religion" (quoted in Labitte, *Predicateurs*, 176).

and that, in view of the fundamental equality of all individuals before the (new) state, all religious beliefs are of equal value and are to be tolerated equally from the point of view of the state. In the principle of tolerance, therefore, the whole multidimensional process is condensed, which we are collapsing here. In the 16th century, just as in the twentieth, the conservatives took this principle under fire, especially since in the theory and practice of the *societas civilis* the ethical purpose which the *communitas* and the *potestas* were supposed to serve, was combined with the prohibition and the prohibition of the religious beliefs.

<sup>263</sup> persecution of "atheism". Already the fri. the conservative polemics

The principle of freedom of conscience, it is stated, has been able to assert itself only as a result of the instrumentalization of religion on the basis of the primacy of the secular criterion of state reason<sup>264</sup>. From a pragmatic point of view, it was again pointed out that tolerance did not bring about the desired pacification, but rather the dissolution of the community.

The result of this will be<sup>265</sup> anarchy and the inevitable struggle of all against all. Catholics and Protestants made each other during the

The religious wars made them advocates of the traditional unity of religion and politics, fighting on principle against the principle of tolerance, although they sometimes invoked it for tactical reasons (when they were the ones being persecuted at the moment). Under these circumstances it was natural that not the religious moralists, but the pragmatists of the state reason, not the various churches, but the modern states helped tolerance and freedom of conscience to prevail - although in some cases it was precisely the state rulers who were responsible for the development of tolerance and freedom of conscience.

unity of religious belief<sup>266</sup>. This fact, however, prevented the

Conservatives could not, even in the 18th century, loudly claim that the spirit of religion was truly tolerant and that the state reason<sup>267</sup> was the most intolerant.

The *societas civilis* could base its ideology on the assumption of an eternal right as well as a unity of (religio-promoted) ethics and politics because it believed itself to be always given and constituted once and for all, *iam constituta*. In view of the divine origin and the eternal validity of the norms, on which their life was based, a condition was inconceivable, in which these were useless. M. a. W.: because of the specific character of the accepted norms, the state in which norms prevail, i.e. the normality, was the only one that was

<sup>263</sup> Thomas, *Summa*, 11-11, qu. art. 11, 3. Cf. above note. 231.

<sup>264</sup> See the chapters that Ribadaneira dedicates to the fight against the principle of tolerance, *Tratado*, I, 23-29 = p. 131ff.

<sup>265</sup> A. a. IO., 26-28 = p. 148ff. Cf. the United Concerns of the Lutheran Prussian Stangle of 3. 27. 1662 = *Urkunden und Actenstücke*, XVI, 31.

<sup>266</sup> Stankiewicz, *Politics*, ff; 7 Yardeni, *Conscience*, 81ff, f176.; Sturmberger, *Tscher*. nembl, f350; Scheuner, *Staatsrason*, passim; Caprariis, *Propaganda*, 105 f, f. 120, 130, 134.

<sup>267</sup> Mirabeau, *Ami*, f245



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Therefore, the political thought of the *societas civilis* did not develop a special theory of the state of exception (namely, one in which normality and norms are absent), neither with regard to external nor to internal emergencies. It is at this weak point that the theorists of the state reason start and develop their doctrine by placing<sup>268</sup> the non-normal, the state without norms, i.e. the state of exception, in the center of their attention. The conservatives<sup>269</sup>, who were well aware of the consequences of viewing the political from the point of view of the state of exception, had to do just the opposite if they wanted to save the traditional view that there was no state that could override eternal law and eternal norms. In the field of foreign policy, they tried to play down the state of emergency, which appears here as war, by sticking to the old concept of *iustum bellum* and by condemning any dynamic expansionism, especially one associated with absolutist ambitions and "Machiavellian" forms of behavior. The long battles over taxation in wartime and the finding that even according to the legal conception of the *societas civilis*, the king was primarily responsible in the event of war

They had learned that an intensive and conflict-ridden foreign policy could have very unpleasant domestic consequences for them, and could even be pursued by the prince in anticipation of these consequences. Therefore, in the 16th century and later, conservative anti-absolutists used to claim that the "good" political reason of the state forbade conquests and consisted rather in "*conservare i dominii giustamente acquistati*"<sup>270</sup>. If, nevertheless, a state of emergency in foreign policy, i.e. war, should occur, then it seemed necessary to behave in such a way that it did not appear as a state of emergency that went beyond all normality and norms; not only treaties in general, but also the rules of war were to be observed at all costs, excessive destruction was to be avoided, and so on.<sup>271</sup> In terms of domestic policy, the aim was to bar the state of exception and the coups d'etat<sup>272</sup> that went with it by openly conducting the *negotia statuum*, as was supposedly the case with the old *concilium publicum*.

<sup>268</sup> Weinacht, *Fiinf Thesen*; Freund, *La situation exceptionnelle*.

<sup>269</sup> For example, Hale knows that Hobbes constructs his doctrine of the state from the state of exception, i.e., with the intention of eliminating forever the danger of rebellion and civil war. In contrast, Hale notes that "the Method and Modelling of Governments are to be fitted to what is the Common and Ordinary State of things ad Plurimum, because mankind have most Ordinarily to do with Such Circumstances of affairs as most usually happen. And it is a Madness to think that the Model of Laws or Government is to be framed according to Such Circumstances as very rarely occur" (*Reflections*, 512).

<sup>270</sup> S. Mattei, *Problema*, IV, (340 Botero also gives priority to *conservare*, although. he yet *fondare* and *ampliare* un *dominio* among the duties of the *ragione di stato* pays, a.a. III.0., (27

<sup>271</sup> Fenelon, *Examen de conscience*, III § XXVI-XXXII = VII, 92- 95. Cf. e.g., Joly, *Traite*, who<sup>80</sup>, refers to Seyssel, among others.

<sup>272</sup> On the meaning of the expression in the century 17., see Thuau, *Raison*, 396(

iblich wa r<sup>273</sup>. The conservative aversion to the *arcana imperii* and every The "politique secrete"<sup>274</sup> had a good reason. For secret politics meant autonomous and uncontrolled action, i.e., autonomization of the governing power, which could violate norms and normality and indulge in Machiavellian coups d'etat unhindered to the extent that it escaped the supervision of the public of the *societas*; on the other hand, the publicity of the state leadership seemed to guarantee the control or dominance of the *societas* and thus also the unity of ethics and politics. The public authority of the state leadership, on the other hand, seemed to guarantee the control or supremacy of the *societas* and thus also the unity of ethics and politics, since ethically and legally founded politics did not need to hide from anyone.

One aspect of this problem deserves our special attention. The absolutist proponents of the doctrine of the reason of state defended their departure from the traditional doctrine of the unity of ethics and politics, as well as their understanding of politics from the point of view of the state of exception rather than the norm and normality, arguing that general and abstract theories were unsuitable for dealing with concrete problems in concrete situations. This idea appears at the time of Machiavelli and independently of him,<sup>275</sup> but it is also implied in the work of the Florentine, although it does not appear here *expressis verbis*. For the conservatives, the opposition between rational politics and eternally valid ethical-political principles was part of the thought of every "Machiavellian" politician. Thus Cardinal Pole put into the mouth of the alleged connoisseur and admirer of Machiavelli, Chancellor Thomas Cromwell, the conviction that what is taught "in scholis" about political questions should be approved by the many - "*sed in secretis consiliis haec parvum valere, insipida esse, non modo nullum applausum excitantia, sed, si saepius dice rentur, nauseam . . . Quare multum interesse, quid a quoquam dicatur, quo tem pore, quo loco, et apud quos,*" all of which are things that "*sola experientia docere potest*" and not a scholastic treatise<sup>276</sup>. Also L'Hopital said in 1561: "*ii ne faut considerer seulement si la Joy estjuste en soy, mais si elle est convenable aux temps et aux hommes pour lesquels elle est faite*"<sup>277</sup>, and similarly the political

<sup>273</sup> s. e. g. Hotm an, *Francogallia* [XIV] = S. 332.

<sup>274</sup> Moreau, *Choix*, I, cf 345,315.

<sup>275</sup> So, for example, in Pontano, who cannot imagine a pure ethics among men; for he sees man "*viventem in civitate coetuque hominum, multisque quotidie occupatum ac metientem non actiones ipsas modo, sed tempus, locum, personam, negotia*" (*De oboedientia*, IV, cited 17, in Lutz, *Ragione*, note 20 9).

<sup>276</sup> *Apologia ad Carolum Quintum*, XXIII-XXIX. Of course, it may be doubted whether Cromwell already knew the "Principe" in 1528, which was not published until 1532. Pole, the defender of ethics, could, however, as it turned out in other cases, also lie if this seemed expedient, see Dickens, *Cromwell*, 77 (, 93 ( His presentation, however, meets the inner logic of the absolutist position, as numerous other evidences from that time prove.

<sup>277</sup> *Harangue à l' assemblée des etats-generaux* (26. )8.1561, citing Church, *Constit. Thought*, 206, Note 30.

The cardinal himself, as well as Richelieu's propagandists, said that it was dangerous for the state to try to<sup>278</sup> apply universal principles, taken from books, to all countries and peoples without regard to place, time and people. The polemical constellation in the ideological front of the sixteenth and seventeenth centuries thus revealed that not the conservatives but their opponents advocated <the concrete and empirical orientation in politics,> while the conservatives had to hide behind universal principles in order to defend the unity of ethics and politics. However, it would be wrong to conclude that early conservatism was fundamentally different in this respect from counter-revolutionary conservatism, which, as we know, pitted the concrete and empirical politics against the so-called abstract revolutionary metaphysics. We already explained that<sup>3</sup> <las Abstract and <las Concrete are themselves constructions polemically conceived and used with polemical intent<sup>279</sup>. Therefore, in each case it must be asked in what respect <las concrete is being defended and

<las abstract is condemned or vice versa. The counter-revolutionary conservatives also defended the - necessarily universalistic - unity of ethics and politics against the alleged revolutionary amorism and Satanism just as, vice <sup>280</sup>versa, the anti-absolutist conservatives defended not only Christian universalism against the relativism of the absolutists, but also tradition and continuity, i.e. empirically founded politics against the willfulness and activism of abstract reason.

The absolutists (the etatistes or statistas) proved their own ability to conduct politics according to the existing circumstances and possibilities when they studiously avoided any compromising glorification of Machiavelli and at the same time paid lip service to the principle of binding the king to divine right, but without essentially departing from their modern conception of sovereignty or otherwise making<sup>281</sup> any substantial practical concessions. Even the conservatives, for all their theoretical adherence to the unity of ethics and politics, had to make practical adjustments. This unity was, of course, conceived in universalistic terms, and in this respect it formed <the ideological antithesis of the factual homogeneity of the pre-state civitas christiana;

therefore their dissolution indicated the collapse of the latter. As much as the Conservatives, while preserving the unity of the civitas christiana, had to resist the rise of autonomous states as the bearers of an international policy.

<sup>278</sup> Evidence in Albertini, Thinking, 176.

<sup>279</sup> See above Ch. I, Sect. 2.

<sup>280</sup> see the next section.

<sup>281</sup> Various aspects of this problem, which admittedly lies outside our question, are illuminated on the basis of the Framosian absolutist literature by Churc h, Richelieu, esp. 33 f., 50, 416 ff; Albertini, Denken, 40 f., 91 f., 191 f.; Thuau, Raison, 334 ff; Kotowits ch, Staatstheorien, 54f., 98; Caprariis, Propaganda, ff.285

The new type of the papal power had to be taken into account. This was done, for example, by the spatulastics when they set out to reorganize the relationship of papal potestas to the secular powers according to the new situation. Certainly, it was clear to them that the papal power was superior to the temporal one, since it was the only one that came directly from God, and they also continued to defend the exclusive status of the Church in spiritualibus; On the other hand, they denied the pope the jurisdictio in tempora libus and the right to appoint and depose kings, and recommended the utmost caution in any interference of the church in secular affairs, which was, of course, characteristic of the new relationship of power<sup>282</sup>. It was this (at least indirect) recognition of the fact that the universal civitas christiana had dissolved that made possible the late scholastic foundation of the law of the people. The newer jus gentium is formed by the attempt to combine the traditional idea of the unity of the human race with the insight into the new reality of the sovereign states. <sup>283</sup>In this combination, the idea of a unified humanity, bound in its unity and universality to universal norms, serves to subject the state to an ethical idea, despite the recognition of its autonomy, and thus to strengthen the position of those who recommended themselves as the appointed interpreters of this ethical idea. In this way, the civitas christiana is saved to some extent, which continued to have an effect into the 19th century: <las right of intervention of the counter-revolutionary Grol3macht advocated by Burke or Gentz and <las concept of the Holy Alliance are rooted precisely in this conservative folk-legal conception. This is readily apparent in Fenelon's theory of the balance of autonomous states within Christendom. Christendom, according to Fenelon, constitutes a kind of "republique generale," and the members of this great body are bound by the idea of a "bien commun" as well as by their own interests to respect <la balance of power> and, in addition, to make common efforts to defeat any nation that threatens to destroy <la balance for its own benefit>; "l'humanite met done un devoir mutuel de defense de salut commun"<sup>284</sup> . The ideas of humanity, the

<sup>282</sup> Typically Molina, De just., II, 29. Cf. the summary account by Hamilton, Polit. Thought, 82ff. Conservatives, such as Hotman (Francogallia, **XVI**) or Coq uille (Dialogue sur Jes causes des miseres = I, B214), see things similarly. Also Fenelon holds the He considers the papal potestas directa to be "absurd and pernicious" and does not want to allow any major interference by Rome in the affairs of the national churches. At the same time, however, he thinks that the autonomy of the Church is now threatened more by the king than by the pope (Plans de gouvernement, II § IV = VII, f185.) This implied that the appeal to the pope was still always remained a possible conservative response to encroachments of secular governmental power.

<sup>283</sup> De leg., u2,19,9. Ober3,2,6. die Begrundung des Volkerrechts bei Vitoria und Soto s. Mesnard, Essor, 463ff., and Carro, Soto, ff.301

<sup>284</sup> Supplement a l'examen etc. I = VII, cf.99. ch. III, para. 4a.

Christianity and statehood are combined here in such a way that the latter loses its sanctity and thus its absolute value.

There is also other evidence of the conservatives' inevitable adaptation to the new reality created by the sovereign state. Thus, they sometimes rejected tolerance with arguments of state reason, or they silently adopted the criterion of neutrality in matters of religion, in order to assert against the respective "heretics" that the one and indivisible religion preserved the best guarantee for the unity and solidity of the state. Moreover, they could no longer practice the traditional cosmopolitanism within the framework of the *civitas christiana* with impunity, since a new loyalty, i.e. to one's own state, appeared to an increasing number of people as the decisive one; this was clearly seen, for example, by the Spanish-oriented fliigel of the Catholic League in France. The state had now become so strong that the unity of state and religion, insofar as it still formed a conservative goal, could only be realized under the aegis of the state<sup>285</sup>. When Hooker propagates this unity in the 16th century, he is no longer thinking of the theory of the two swords, but rather of the radically shifted English identification of the head of state with the head of the church and wants to counter revolutionary claims that appeared under theocratic garb. For the Puritan demand for an autonomous and egalitarian organization of the church basically expressed the desire to transfer the superior structure of the regenerated church to the state as a whole in a later phase. The separation and structural difference of church and state therefore meant a threat to the existing state. Thus, when Hooker asserts the unity of church and civil society against their Puritan separation<sup>286</sup>, he seeks to preserve the secular hierarchy rather than to refresh the medieval ideal. The fact that in his eyes the monarchy should be the guarantor of this hierarchy is another indication of the conservative willingness to come to terms with the new state under certain circumstances<sup>287</sup>. In the meantime, the power of the government had strengthened to such an extent that the society had to turn to it to ensure its own maintenance. This made adaptation not merely a bitter necessity but a self-evident *modus vivendi* that suggested reinterpretations of the new situation. Thus Piitter noted the strengthening of the sovereigns in Germany after 1648 in order to draw the longed-for conclusion that now the princes were strong enough to bring about the good (in the sense of *societas*).

<sup>285</sup> Zurn Obigen Yardeni, *Conscience*, ff.104 133, ff. 183205, (230 , 239.

<sup>286</sup> *Eccl. Pol.*, VIII, 1-2 = III, (329

<sup>287</sup> See above chap. II, para. 3a.

nen<sup>288</sup>. The financial experts were told what to do, because they knew that it was now up to<sup>289</sup> them. However, the adaptation strategy also required certain concessions in theoretical and ideological matters. For all the rejection of the state reason, the separation of religion and politics had to be recognized to a certain extent and the criterion of niceness in politics had to be revalued. These shifts often took place within the given scholastic-aristotelian framework and resulted in mediating positions that were accepted, at least nominally, both by moderate absolutists and by representatives of the *societas* on its way to society who were willing to compromise.

could<sup>290</sup>.

#### *d. The hubris of autonomous reason and the appeal to tradition and history*

The struggle against the claim of human, and indeed individual, reason to determine good and evil on the basis of its own autonomous criteria and to shape social life accordingly has been at the center of conservative thought not only since 1789, but already in the 16th century. We have just shown that the doctrine of the reason of state implied not only the independence of governmental power from the *societas*, but also the emancipation of human reason from the dictates of traditional divine-law. It was not without reason that Gentillet pointed out that Machiavelli's atheistic followers

In his view, however, the latter would fail before the truths of revelation, or even lead to faith, if it functioned correctly and grasped<sup>291</sup> the teleological structure of the world. In Richelieu's time, when the French devots took up arms against the *etatistes*, they insisted on the integration of political thought into the broader framework of theological thought, arguing that human reason would hardly be able to shape socio-political life satisfactorily if it did not orient<sup>292</sup> itself to higher, metaphysical instances. The binding of human reason to God or to the hierarchically structured *societas* as the visible embodiment of God's will to order soil banishes hubris, namely the view that man can create order in the world by his own efforts. However, hubris is not banished by the fact that the reason of this or that individual, of this or that sect refers to God. God

<sup>288</sup> *Hist. devel.*, II, 184.

<sup>289</sup> V gl. Maier, *Polizei*, 161ff., esp. 167.

<sup>290</sup> On such mediating positions in the German area, cf. Bruckner, *Staatswiss.*, 154-163. Cf. Maier, *Pol. Wiss.*, 22,31.

<sup>291</sup> *Discours*, ff.159

<sup>292</sup> *Thuau, Raison*, 142.

is truly obeyed only when the individual or partial reason submits to the collective reason as crystallized in the hierarchical order of the *societas*. This Hooker emphasizes against the Puritans, who were otherwise not lacking in piety. Personal morality, he writes, does not necessarily enable one to become a good member of the *societas*; morally blameless people often judged in political and ecclesiastical matters "by what rule they frame to themselves" and found everything wrong with the existing; "thus by following the law of private reason, where the law of public reason should take place, they breed disturbance" The <sup>293</sup>decisive contrast, then, is that between partial or private reason- and collective or public reason embodied in the existing institutions. Only the latter is truly reliable; for, as the Prussian Stancle once put it: "singuli decipere possunt et decipi, nemo omnes, neminem omnes fefellerunt".<sup>294</sup>

The contrast between collective and partial reason also underlies Coke's distinction between artificial and natural reason, which Burke later adopted. Natural" is what Coke calls the reason of the individual, which is still crude, i.e., not yet experienced in the comprehension of larger contexts, and for this very reason could think that it is wiser than the existing laws and institutions. In Coke's terminology, the good kind of reason is called "artificial" not because it could deviate from nature in the sense of the divine order or because it could fabricate its own principles at will, but because it resists spontaneous, "natural", that is, willkür or unliberated intuitions, but, on the contrary, tries to offer all possible art to grasp, to identify with, the reason objectified in the law in force <by study and experience. For <law forms a collective work of successive generations, and no conscious effort of certain individuals, however wise they may be, can substitute for <law what is in it experience and wisdom: „this legal reason est summa ratio."<sup>295</sup> "Artificial Reason" thus ultimately means the dissolution of the natural reason of individuals in the collective reason of traditional law - but in such a way that the reason of individuals, now trained by study and experience, remains capable of contributing to the collective work, in accordance with the spirit of the traditional, what the needs of the moment demand. Here, too, there can be no question of an unreflective traditionalism. Coke places <law moral law below <law common law and the statutes of parliament in third place<sup>296</sup>, and furthermore he recognizes <law right of parliament, <By its statutes, which are "the highest and most binding laws", <law common

<sup>293</sup> Eccl. Pol. I, =16,6 I, 282.

<sup>294</sup> Geeinigtes Bedenken vom =27.3.1662 Urkunden und Actenstücke, XVI, 24.

<sup>295</sup> I Inst., b97.

<sup>296</sup> I Inst., 344a.

law and <law moral law<sup>297</sup>. This does not mean, however, that <law parliament can do with the common law as it pleases, especially since the alteration of old legal maxims is a dangerous thing <sup>298</sup>The alterations made by <law parliament have no arbitrary or voluntaristic character, but are precisely the work of collective reason; for <law parliament does not represent a part which is different from the whole and turns against it. It is the whole political body, since it includes the king and all "lords spiritual and temporal, knights, citizens and burgesses"; in it, therefore, "there is ultimum sapientiae"<sup>299</sup>. But the change which proceeds from the whole and therefore does not affect the harmony between its parts, is the very opposite of that change which proceeds from the part and disturbs <law balance or hierarchy based on *justitia distributiva*. Since <law parliament embraces the whole political body, it corrupts precisely that which <law traditional common law also corrupts, namely the *communitas* in its continuity; and since it as a whole cannot, by definition, abolish itself, it cannot either

<The common law, even if it modifies it here and there, is to be kept in force. Such a modification is basically a confirmation of the whole, i.e. of the social body in its ability to act, and is even regarded as a confirmation of tradition, because it is undertaken by the living bearer of tradition. In concrete terms, this means that tradition is considered intact in the face of all changes in existing law as long as the traditional bearers of rule remain unchallenged in their position. As long as there is no change in this crucial point, changes that are unavoidable in the face of new needs can be carried out as if nothing had changed. The medieval fiction that changes in law are merely interpretations of old law is thus perpetuated<sup>300</sup> By invoking the dictates of collective reason, the current needs of those who traditionally have the monopoly on the interpretation of this reason are satisfied, and the glorification of the traditional goes hand in hand with its manipulation in the interests of its interpreters. History and tradition here do not form once-and-for-all defined magnitudes, but rather a loose sum of precedents that can be dealt with<sup>301</sup> in a highly selective manner. What holds this sum together and gives it the shape of organic unity is the continuity of the ruling stratum in its entirety, which is projected into the ideological as a continuing tradition and as collective reason.

<sup>297</sup> I Inst., b115.; II Inst., proeme; II Inst., ed. 26. Cap. =13 S. 664. Vgl. Hale, History, 88,89.

<sup>298</sup> I inst., b282; II inst., Merton., c. 9 = p. 97.

<sup>299</sup> IV Inst., c. =1 S. (2

<sup>300</sup> About the particular conflation of this fiction with the English judicial practice s. Schell, Engl. Rechtsd., ff20

<sup>301</sup> This is also the case with Coke, see the analysis by Hill, Introduction. Origins, esp. ff.250



Another famous English jurist of the 17th century, Hale, formulated the early conservative rejection of autonomous reason in a way that almost *ipsis verbis* anticipates the conservative argumentation after 1789. This was done - not by chance - in a direct polemic against Hobbes' theory of the state, namely its attempt to construct the state or society rationally *ex nihilo*. With a side blow against the geometrical method used by Hobbes, Hale remarks that political and historical phenomena do not have the same degree of certainty as mathematics, which is why the *a priori* construction of a human *communitas* can never be realized.

could<sup>302</sup> succeed. The abstractions that arise during the *a priori* construction of the social model are now paired with those in which the investigations into the nature of good and evil find their way; such investigations are undertaken by theorists who are not satisfied with the existing and the prevailing ideas, whereby they are, of course, distanced from the reality as it presents itself in the social model.

i. biblichen language articulates, remove<sup>303</sup> more and more. Hale, for his part, gives the

existing right the preference that babe preserved for centuries, and is by no means ready "to adventure the happiness and peace of a kingdom upon some New Theory of my owne"<sup>304</sup>. No individual, therefore, may be held to the criteria of his

The only way to measure what is good or bad for the whole is to use one's own reason. For the whole and the law on which it is based are not the work of individuals, but "the Production of long and iterated Experience which, tho' it be commonly called the

Mistress of Fools, yet certainly it is the wisest Expedient among mankind"<sup>305</sup>. The Collective experience, however, not only surpasses the capacity of individual reason, but also its capacity to comprehend; fortunately, it is not necessary for individuals to grasp clearly and distinctly the deeper reason, the hidden reason of the Institutions; enough that they feel secure under the aegis of them. In any case, it is "foolish and unreasonable for anyone to find fault with an institution because he thinks he could have made a better or expect a mathematical demonstration to evince the reason.

ableness of an institution"<sup>306</sup>. Even an admittedly imperfect

Law "is preferable before that arbitrary and uncertain rule which men miscall ye Law of Reason "<sup>307</sup> - after all, human things could never reach<sup>308</sup> perfection.

These views of Hale's did not form a unique thought product of a single brilliant conservative; though they were not very often so gli.ckly formulated-

<sup>302</sup> Reflections, 502.

<sup>303</sup> A. a. O., 503.

<sup>304</sup> A. a. O., 504.

<sup>305</sup> A. a. O., 505.

<sup>306</sup> A. a. O.

<sup>307</sup> A. a. O., 503.

<sup>308</sup> A. a. O., 504.

When the ideas of the Parisian Parliament were not published, they became commonplace, so that they could easily find their way even into the official statements of the status-quo corporations. Thus, the Parisian Parliament condemned authors who criticized feudal rights, arguing that they wanted to persuade people that old institutions and customs were not only unjust and barbaric, but also senseless - even though they had nothing to put in their place but "des rêves quelquefois séduisants clans la théorie"; these dreams, however, could not be realized, since all calculations in this field were imperfect, especially when the theory of the "rêves quelquefois séduisants clans la théorie" was not the only one. the<sup>309</sup> constitution particuliere, le génie et les mœurs d'une nation". Behind this criticism, of course, is the conviction that human *communitas* does not arise and take shape on the basis of *a priori* plans of reason, but of natural needs and affects; the social nature of man drives him to submit to "conventions" and thus to offer protection in return.

10\_<sup>3</sup> As the scholastic, so also the sacralized conservative theory by no means considers consensus to be superfluous. At the same time, however, it makes the important distinction - also for Burke, for example - between expressed and tacit consensus, which should silence from the outset any revolutionary questioning of the foundations of the existing system based on individual reason. For the tacit consensus already results from the birth of the individual in a *communitas*, whose historical continuity *eo ipso* testifies to the readiness of all past generations to live in it. The duration of the collective body, i.e. its ability to outlast everything individual and subjective, thus becomes the socio-political *ultima ratio*; in this duration individuals and generations are so intertwined that no partial will can refuse its consent to the whole:

corporations are immortal; we were then alive in our predecessors, and they in their successors do Jive still "<sup>311</sup> This awareness of the duration of the collective Körper's final sociopolitical argument lives in the oft-repeated admonition to learn from the wisdom of our ancestors and follow their example

123, as well as in the frequently expressed concern of the Stancle for their "posterity" or their "descendants" "q"<sup>3</sup>. The same awareness also gives rise to the "posterity" or "descendants" of the Stancle.

digung von Privilegien stereo typ e Erinnerung, diese besti.inden „von undenklichen Jahren", sie waren,, uralt" etc..<sup>314</sup>

The compact mass of time, if you may say so, which is the duration of the

<sup>309</sup> Remonstrance of the 3rd-18th30. = 4,1776Flammermont, fl11,362

<sup>301</sup> Remonstrance of 11/13 =5.1788 Flammermont, III, 715.

<sup>311</sup> The quotation and train of thought in Hooker, Eccl. Pol., I, 10, =8 I, 246.

<sup>312</sup> Typical statements in Hotman, Francogallia, Praef and XI [XIV] = S. Cf.142,332. XIII: Pietatis pars est, maiorum sapientia delectari.

<sup>313</sup> See, for example, Urkunden und Actenstücke, X, 522; XV394,569, , 700.

<sup>314</sup> See, e.g., a. a. VO., 874; XV,700. Of „ynmemoria l huso" speaks the C uaderno of the Cortes of =1506 Griffiths (ed.), Repr. Gov. , 15.

The conservative view was that the eternal right, which constituted the collective body, should nip in the bud every claim and every impulse of the autonomous, upright democracy. While the absolutists used to distinguish between eternal and temporal law and to emphasize that "time brings<sup>315</sup> about the degradation of all things," for the conservatives time and eternity melted together, so that time could not actually produce anything that had not existed since time immemorial. Against the background of this understanding of time, it was possible to claim in 1577, contrary to the modern sense of "reformation" already in use, that reformation was basically nothing else "que levant Jes choses en leur premiere et ancienne forme"<sup>316</sup>. The sameness of time, which seems like timelessness, corresponds to the structural immutability of the collective body despite the transience of its individual components. For the anti-absolutist conservatives it is therefore no question that "all newness is very ...dangerous".

especially in materia privilegiorum et pactorum", of course -<sup>317</sup> you affirm, that it is not easy to innovate or to introduce something that has not been introduced in a country or a state", and that, as examples "ex Historiis" have shown, "such changes have given rise to great motibus and unrest and ruin"<sup>318</sup>. And they are convinced that only

The "well-founded antiquity ... gives the strength to endure," while reform plans and constitutional concepts that spring from the minds of princes,

<sup>319</sup>All this is repeated at every opportunity, because now the intention of autonomous or absolutist reason seems to be clear, to introduce a constitution "all over again in Rempubliam tanquam in rasam tabulam, cui nihil antea inscriptum sit"<sup>320</sup>. The parable of the tabula rasa describes very well the radicalism attached to the claims of autonomous reason, as it appeared in the form of the modern sovereign. This reason, which, from a conservative point of view, went hand in hand with voluntarism and activism, just as collective reason went hand in hand with the inviolability of a virtually timeless collective body, wanted, as it seemed, to undo history, i.e. to level out all historically predetermined social differences, because only in this way could it dominate everything, be equally sovereign everywhere. This was countered by

<sup>315</sup> Thus Oldendorp already s1530, . Maier, Polizei, ff.131

<sup>316</sup> Thus Pierre d'Epinac, representative of the clergy in the Estates-General of Blois, citing Church, Const. Thought, note. 120,104.

<sup>317</sup> Geeinigtes Bedenken der preul3ischen Stancle vom =27.3.1662 Urkunden und Acten sticke, XVI, 41.

<sup>318</sup> Replica of the Deputies of the Preul3. Stancle an den Kurfürsten vom 21. 4. 1651 = Urkun den und Actensticke, X, 208.

<sup>319</sup> A. a. (O.note 317), 21.

<sup>320</sup> This accusation is rejected by the commissioners of the Swedish crown, who are under the command of the Pomeranian estates, see Back, Herzog, 102f.

that precisely because the *communitas* is not a *tabula rasa*, i.e., it is neither Because the *communitas* is not a *tabula rasa*, i.e. neither without history nor undifferentiated, but because each component of it has its own individuality, the will of autonomous reason cannot dominate it in a uniform and leveling way: „... le Roi ne regne pas sur toute s Jes provinces au meme titre", since each province has its own "coutumes"; "la volonte du Roi, pour etre juste, doit done varier suivant les provinces"; on the contrary, if the sovereign abolishes the various coutumes and privileges - "ii est certain qu'alors la volonte du

Roi pourrait etre uniforme" <sup>321</sup> .

This offensive provincial particularism, which came to life<sup>322</sup> on the eve of the French Revolution, was actually a very old phenomenon, related to the conservative rejection of the claims of autonomous absolutist reason from the very beginning. Its principle was established 1506 at the latest when in

a Cuaderno of the Spanish Cortes was written: „cada provinc;ia abunta en su seso [= it forms an independent whole], y por esto las leys e hordenanc;as

quieren ser conformes a las provinc;ias, y no pueden ser yguales ni disponer de una forma para todas las tierras". <sup>323</sup> This has often been repeated and elaborated upon since the absolutists claimed that the customs and laws of the provinces were valid only by virtue of original royal decree, or at least by virtue of subsequent royal approval, which, in their opinion, gave the sovereign the right to abolish or modify<sup>324</sup> such customs or laws. Coquille, who made the struggle against this particular aspect of absolutism the centerpiece of his remarkable

The first time that the artist set up his own work and thus became an equal forerunner of J. Maurer's, he was a

The king denounced "those great celateurs of the royal rights" who wanted to replace traditional customs and provinces with a new administrative order, and claimed that the coutumes were "droit commun et originaire et non survenu ou adventice", the collective work of all three stancles and the result of a process that had begun before any written definition of the law. The king only approves them and thereby he gives them merely "la vie exterieure" <sup>325</sup>. Coquille's astonishingly rich surcharge

<sup>321</sup> Sodas Paris Parliament in the Remonstrance of 11-13. 4. 1788 = Flammermont, III, 743.

<sup>322</sup> Dariiber Hinzte, Staatseinheit, ff156. On the Contemporary Preservation of Local Traditions in Hungary as a reaction against Josephinian absolutism, see. Mitrofanov, v Joseph II, ff.316

<sup>323</sup> Griffiths (ed.), Repr. Gov. , 14.

<sup>324</sup> Evidence in Albertini, Denken, 45; Church, Const. Thought, 104£, 107f., f116. , 198f.

<sup>325</sup> Coutumes de Nivernois, OC, II2, B-1,12 A, B3, B6; Questions etc., I = OC, II, 2, 125, 126; Institution au droit des Franc;ois, OC, II, 2, 1; Discours des Etats ... OC, I, 286A. Putter, too, who recognizes legislation as "the most general governmental right", thinks that "„pri vat rights are not both <determined by proper laws from the highest authority, and left to the habit and autonomy of each place or sex ... are left to the habit and autonomy of each place or sex" (Definition, §§ )138,140.

of all possible customs in all possible areas of social life is based on a genuine sense of the immense diversity of reality, which, however, does not appear to him as unpredictability or anarchy and does not disturb him at all. Coquille gladly registers this diversity and regards its existence as an indisputable fact. Admittedly, he knows and mentions the changes that have occurred in the course of time in the various customs, but these do not prove to him the changeability of the social whole at will, but rather confirm its innate adaptability, which makes voluntaristic interventions superfluous. He examines which custom constitutes the rule and which the exception, but without demanding the elimination of the exception in favor of the rule, and also without measuring existing customs against the general yardstick of One Reason, so as to be able to compare them with one another, although he sometimes praises the practical expediency of one or the other and seeks to emphasize their inner logic by sentences such as "ces coutumes sont fondees en grande raison" or "en tres-juste raison". We know which reason we are dealing with here.

The custom appears thus as crystallization of the collective reason or as manifestation of a certain people spirit, it is bound to a certain "province" and to certain people. These elements merge with each other and form something specific and unique.<sup>326</sup> This peculiarity, however, in no way violates the universal validity of the divine laws and the legal conception of the *societas civilis*<sup>327</sup>; rather, it proves the fact that modern sovereignty has not yet (completely) prevailed or that the said legal conception still determines *la* life. If, however, the legal conception of the *societas civilis* is necessarily connected with the unique and peculiar unity of custom or law, land and people - a unity which is often called "nature of the people" -, modern sovereignty, by violating that legal conception, must virtually destroy the nature of the given people itself: "naturam populi immutare conatur qui eius consuetudines moresque mutare velit," said Tschernembl<sup>328</sup>. Turned differently, this means, in Smith's formulation, that "fashion of government" and "nature of the people" must<sup>329</sup> fit together like "a garment to the bodie or shoe to the foote. The English

<sup>326</sup> A few striking formulations by Coquille illustrate how conscious these connections were even then: "Coutume, Province et peuple correspondent l'un à l'autre. (Hist. de Nivernois, OC, I, B437), „la vray marque de Province est la Coutume distincte et separee" (Discours des Etats ... , OC, I, 286B), lois mi.iGcen as well as moeurs „selon le gout et le sens de chacun peuple" are made (Questions, I = OC, ).11,2,125

<sup>327</sup> The self-understanding is striking, with which Saint-Simon mentions "lois humaines, locales, politiques, divines" in one breath, see Lettre anonyme, Memoires, III, 1273f.

<sup>328</sup> Citation Sturmberger, Tschernembl, note. 10363.

<sup>329</sup> De rep. ang!., I, =15 S. 17.

Conservative jurists, whom we have already met in this section, also say that the common law they have explained is "appropriated to this kingdom of England as most apt and fit for the government thereof" and not to be compared<sup>330</sup> with the law of other nations; "it is singularly accomodated to the frame of the English government, and to the disposition of the English nation; and such as by a long experience and use is, as it were, incorporated into their very temperament"<sup>331</sup>.

This conception of the concretely located and with a concrete people from

The right of the latter, of course, does not inspire any sympathy among conservatives. <The Roman law could, and indeed increasingly did, directly (<through the *legibus solutus* doctrine) and indirectly (<through the primacy of the *lex* over the *consuetudo*), support absolutism. As long as the foundations of the *societas civilis* were still unshaken, the dangerous aspects of the Rornish law could be<sup>332</sup> neutralized by various reinterpretations. But when the theoretical possibility of an absolutist use of Roman law became a practical approach to it, reinterpretations could no longer provide a reliable remedy; a counterattack was necessary. Coquille denied that <las Roman law had "force de loy" and said that <las true civil law consisted in the Hotman's counterposition of Roman law and *consuetudo*, which in its infinite adaptability and plasticity is able to<sup>334</sup> remain ancient and yet fresh, *tam-antiqua et tam nova*, became <sup>333</sup>famous. The specific conservative intention and argumentative underpinning of this polemic (renewed after 1789) against Roman law is not altered by the fact that in sixteenth-century France even prominent absolutist legists distanced themselves from Roman law: *they* did so not to defend traditional law, but to support monarchist frii-nationalist Gallicanism, which

They were directly opposed to papal influence, i.e. also to <las *ius canonicum*, which was oriented towards Roman law<sup>533</sup>; their anti-conservative attitude was also reflected in the fact that, despite their fundamental affirmation of the national character of law in general, they demanded a codification, standardization and unification - in short, a defeudalization - of domestic law, which would have been impossible in the Roman Empire.

<sup>330</sup> Thus Coke, II Inst., Merton cap. 9 = S. Cf98.. III Ins t., cap. 36 = S. 100.

<sup>331</sup> Thus Hale, History, 47; cf. 83.

<sup>332</sup> On these reinterpretations see Carlyle- Carlyle, History, II, 75 u. V, 465 f.; Gilmore, Argument , 131; Lewis, Med. Pol. Ideas, I, 5; Congar, Quod omnes, 180f.

<sup>333</sup> Institution, OC, II, 10;2, Questions, II = OC, f11,2,127

<sup>334</sup> Pocock, Ancient Const., 15; Caprariis, Propaganda, ff.231

<sup>335</sup> Kelley, Foundations, esp. ff171 (i.ibe r Du Moulin), f198 , 286; Mortari , Diritto, 95ff.

could, of course, only<sup>336</sup> benefit absolutist centralism. Thus, the absolutists in France were criticized for their polemically conditioned (and iibrigen not unanimously en<sup>337</sup>) Restraint against the Roman law just as

The conservatives became conservatives just as the absolutists became absolutists when they advocated the codification of the existing law. In this case, too, the intentions of the two sides were fundamentally different: the absolutists wanted to strengthen the central power of government, while the staunchly conservative advocates of codification, who nevertheless adhered to the principle of the superiority of custom over any written law, aimed to preserve existing privileges.

This has often been<sup>339</sup> the case in the German-speaking world as well<sup>338</sup>.

The conservatives' invocation of tradition and heritage as the „best The "teacher "<sup>340</sup> was not necessarily connected with an appeal to history as a succession of specific events; rather, it acted as a Reveling in the historicity, like a glorification of the unabandonability of the societas, which was under the sign of the eternal divine right. The ideological conflicts, however, forced the conservatives to look at the tradition historically, i.e. to set landmarks in the past, on the basis of which they could date, trace and present current, pleasant and unpleasant phenomena in a polemically effective way. The debate on the relative merits of Roman and customary law contributed to the sharpening of the historical sense by raising the question of the validity of a law that arose under quite different and fearfully absent conditions, but the metaphysical and theological components of early conservative thought were too strong to allow a deepening into the problem of historical relativism, which, incidentally, only developed under the intellectual-historical conditions created by the Enlightenment. clarified<sup>341</sup>. In the 16th century, the incentive for historical studies was rather the desire of all parties to find arguments for their own cause in the past, or to

to present the past in such a way as to justify their own cause. So it has not been the case that the Conservative Friends, while the Absolutists were enemies of historical research (read: constructions); in

<sup>336</sup> On Du Moulin's call for the rationalization of law and his critique of feudalism, see Caprariis, Propaganda, ff, (211241; Church, Const. Thought, ff180

<sup>337</sup> About the Rome cult of the etatistes around Richelieu and the polemic of Maran against Hotman  
s. Thuau, Raison, 408.

<sup>338</sup> Mortari, Diritto, 168ff

<sup>339</sup> Hall, Kurm. Stande, 101, 108; Sturmberger, Tschernembl, 248 f.; Back, Herzog, 165f.; Beschwerden der julichen Ritterschaft vom 16.11.1541 = Landtagsakten v. Jillich-Berg 1400-1610, 362.

<sup>340</sup> Thus Moser, Von den Teutschen Landen, 1163.

<sup>341</sup> Kondylis, clearing, ff421

Everyone found his way through history if it offered him what he was looking for in it. Thus the absolutists sought in the past that original act of the sovereign from which all existing laws and privileges could be derived, while the conservatives preferred to place the beginning of politically relevant history in an unimaginable primeval time in which common law was formed; nevertheless, it often seemed more advisable to abandon this nebulous conception in favor of a more concrete one, in order to render the absolutist recourse to the original act of the sovereign ineffective.

They accepted a primordial assembly of the people that had<sup>342</sup> established the rights, duties, and limits of governmental power forever. This constitutive Although the gathering of the "people" appeared as a unique and concrete historical event, at the same time it was - thanks to its incessant full or partial repetitions at the Champs du Mars or du Mai, etc., or in the miniature form of a council surrounding the prince - a permanent condition that was to constitute the "state of nature" of the societas civilis; in this sense, Hotman considers the "restitutio" of the societas in "suum antiquum et tamquam naturalem".<sup>343</sup> statum" as the only fundamental solution to their problems . Thus arises very early The conservative utopia, which remained alive in its anti-absolutist coloration until the end of the 18th century<sup>344</sup> and later often took the shape of an idealization of the The French conservatives did not all share Boulainvil liers' opinion that the golden age had reached its zenith under Charlemagne. Not everyone shared Boulainvil liers' opinion that the golden age had reached its high point under Charles the Great<sup>345</sup>, but most French conservatives agreed that the reign of Louis XI marked an embarrassing turning point in the history of France. History of the dissolution of the state of nature had<sup>346</sup> meant. In general After each setback, there was a growing tendency to glorify the past in general terms and to speak of a "more secure peace," "uninflicted freedom," and the "peace of the world. to blacken<sup>347</sup> the "old happiness". Regardless of where the czasur in each case

<sup>343</sup> Pocock, Ancient Const., 16ff.

Fr ancogallia, Praefatio, p. In the 142.chap5.. of his work, Hotman lays out his view of of the development of this "state of nature" in Gaul of the 5th century. His version is also adopted by Beza, De iure, VI = p. 60 ( Ober Vorlauffer Hotman in this respect s. Caprariis, Propaganda, esp.

<sup>344</sup> See<sup>44</sup>, for example, "Der gesamten Oesterr. Stancle offenes Manifest . . . on Emperor Ferdinand's 11 unlawful and violent accession to power," in which it is emphasized that in the blessed primeval times the "proceres . . . Imperium absolutum minimum ferebant" and that "amor, fides, studia Provincialium" were the only ones to establish the first power (Hist. Acten sticke, I, 91).

<sup>345</sup> Histoire , I, ff.211

<sup>346</sup> See, e.g., Coqu ille, Discours des Etats = OC, I, A280. Moser places the end of the The original freedom in Germany was postponed to a much later date, see Von den Teut schen Landen, f1146.

<sup>347</sup> S. e. g. the concern of the Preullian Stancle vom10 . 11.1657 = Urku nden and Actensticke, XV, 398.



The course of history seemed to be divided into two parts and a long period of happiness was followed by a period of unhappiness. Even more: the *Zasur* meant at the same time an apostasy from the natural state or from the divine right. Whether a restoration was to be expected remained unanswered and open at first. The disaster was not yet so unbearable that it could have been the incentive for historical-philosophical speculations and constructions. Therefore, such speculations and constructions came only after 1789.<sup>8</sup>

The history of the idea of ancient Germanic freedom is essentially well known<sup>349</sup> and does not need any special explanation here. It is only necessary to note its connection, which has not been sufficiently emphasized so far, with the legal conception of the *societas civilis* and the thesis of the primacy of the natural *societas* over the voluntaristic power of government; it is also necessary to keep in mind the fact that the aforementioned idea in its plasticity could support<sup>351</sup> not only leadership claims of a certain wing of the conservative camp against similar claims of other conservatives<sup>350</sup>, but even radical democratic demands. This latter case, as well as others,<sup>352</sup> showed that the grip on history was double-edged and that, as a result, the past could not easily be declared the sole preserve of conservatives. Nevertheless, the relationship of the conservatives to the past had to remain closer than that of the absolutists, not only because of the conservative preference for customary law, but also for an internal reason. There could be no doubt that in the pre-absolutist past the independence and power of the nobility were greater than in the present, and this observation fed the nostalgia for the past and encouraged the tendency to idealize it. In contrast to this, the absolutists' approach to history remained relatively reticent, and often seemed like a polemical-ideological obligation, since they were really only interested in proving that the first had possessed its present power from the beginning; the past was therefore not more beautiful than the present, but at the most equivalent to it or its confirmation. Essentially differently saw however

<sup>348</sup> S. u. Chap. III, Sect. c.6

<sup>349</sup> See the works by Hiilzle, Pocock and Kliger mentioned in the bibliography.

<sup>350</sup> The interpretation of the idea of the old Germanic liberty on the part of the Parisian Parliament should not only hit absolutism, but also the noblesse d' epee, see. Carcassone, Montesquieu, 25ff, 472f.; Rogister, Crisis, 110ff Cf. the Remonstrance of 27.11.1755 Flammermont, II, ff.26

<sup>351</sup> This happened in the English Revolution, when the Levellers took the - from the anti-absolutist The idea of a paradisiacal primordial state was mixed with the idea of an ancient Germanic freedom, as used by the Germanic camp as a whole, see Hiilzle, Idee, 63 125ff.; Pocock, Ancient Const.

<sup>352</sup> For example, in exploring the historical origins of feudalism and parliament, which also provided argumentative weapons for the absolutist party, see Pocock, Ancient Const., 70ff, 103 ff, ff182; cf. Kliger, Goths, 134122f.

The relationship between the present and the past in the perspective of the already stricken nobility, and this makes it understandable why the striking intensification of noble social consciousness at the turn of the 16th century was not least expressed in the desire for a return to the Middle Ages, in which the figure of the knight as a fighter, judge and man of honor had<sup>353</sup> prevailed. During the first half of the 18th century, many works were published in France that glorified<sup>354</sup> the Middle Ages in this sense. Especially the historical works of Boulainvilliers testify to the strong interest of this historiography in socio-historical and institutional questions<sup>355</sup>; only by analyzing the developments that had affected the socio-political status of the nobility could the cause of the nobility be served. The absolutists reacted to the conservative historiography - they did it nobly through Du Bos - but did not take the initiative in this field. The prominent example of Hobbes as well as the not exactly high reputation of history among the *etatisces*<sup>356</sup> prove this. The (relative) absolutist equality against history was to change in the course of the 18th century into the liberal-democratic natural law enmity against the historical principle, as the French pamphlet war of 1788/1789 showed<sup>357</sup>. Now the conservatives could claim history and the study of it entirely for themselves, although soon luminaries of liberal historiography were preparing to write the history of the Middle Ages from the point of view of the parliamentary movement.

#### *e. The Group, the Individual and the World Order*

From the 16th century onward, the nobility was forced to reiterate with renewed vigor the ideological principles that legitimized its traditional rule within the *societas civilis* or to reformulate them in light of current polemical needs. Central among these principles were: the priority of the group over the individual born in it and belonging to it for life, so that the hereditary rule of the leaders of the *oikos* was secured and the state impossibility of the individual as such was excluded; the rejection of the equality of all men - implied in the demand of the sovereign power of government for the state immediacy of all individuals as such - and the defense of the hierarchy both among the estates and within them; the legal cover of this hierarchy by the theory of *justitia distributiva* and

<sup>353</sup> S. Mandrou, Classes, 42f.

<sup>354</sup> Lombard, Du Bos, 580 ff. On the remaining channels for the dissemination of conservative thought at that time, see. Ford, Sword, 234ff

<sup>355</sup> S. Histoire, last pages of the preface u. I, esp. ff.191

<sup>356</sup> Cf. the statements of Silhon and Rohan quoted by Thuau (Raison, 384).

<sup>357</sup> Gohring, Weg, 250;244,248, Egret, Pre-Revolution, 332,346.



the related interpretation of the nature of privileges; and the underpinning of all this by a certain conception of the world order as a whole. The urgent occasion for the subsequent repetition or reformulation of these principles was the crisis in which the nobility often found itself in the 16th century. It felt threatened by the deterioration of its economic situation (also as a result of the reorientation of the world economy that had occurred in the meantime), by the rise of absolutism and by a hitherto unknown social mobility<sup>358</sup>. Placed between a fondness for action and an aspiring bourgeoisie, the nobility had to unite as much as possible and strengthen<sup>359</sup> itself ideologically by reaffirming and romanticizing the ideals of chivalry, by rediscovering medieval heroic legends or by the cult of long ancestral lines. At the same time, he went on the attack and tried to enhance his social role in relation to both the royalty and the bourgeoisie, or to lower the royalty and (especially) the bourgeoisie<sup>360</sup>. This need for self-affirmation was expressed by Count zu Solms when he derived the word "nobility" from "eagle"<sup>361</sup>, or by the nobility of Beauvais, for example, when he called the<sup>362</sup> nobility "la quinte essence du genre humain" in his Cahier of 1614.<sup>2</sup>

The struggle to preserve the endangered status of the nobility is played out on three

levels at the same time. Against the efforts of the absolutist monarch to place himself above the nobility, the latter recalls the original social and political equality between princes and nobles<sup>363</sup>; in this sense, it is said that the council of nobles, which should surround (and practically control at every step) the king, actually consists of a "multitude of the rois."<sup>364</sup> Secondly, however, the high nobility, troubled by the growing social mobility, which also caused an opening of the ranks of the nobility itself, believed that it had to defend the status of the nobility in toto by its own demarcation against the upstarts and the lower nobility. These attempts at demarcation took various forms<sup>365</sup>, since they had to take into account the respective circumstances and special interests, which is why they were not accepted by all members.

<sup>358</sup> On these phenomena in France, see Salmon, Crisis, 40 ff., 92 ff., 211 ff.; cf. Mandrou, Classes, 29.

<sup>359</sup> Rollier, Adelsethik, ff.240

<sup>360</sup> Cf. Marcks, Coligny, 217.

<sup>361</sup> Uhlhorn, Count of Solms, 153,155.

<sup>362</sup> Citation Hayden, France and the Est. Gen, 203.

<sup>363</sup> See, for example, Sturmberger, Tschernembl, 346.

<sup>364</sup> Thus Brutus, s Vindiciae, III = p. The205. socio-political function of this council in connection with the struggle of the nobility against modern statehood is discussed in the next section.

Section the speech.

<sup>365</sup> Lieberich, Landlords, 16ff, f.156,158; Labatut, Dues, 333ff.

of the high nobility were<sup>366</sup> always supported with equal emphasis, their general meaning was clear, however: by strictly adhering to the hierarchical principle even within the nobility, its universality was fundamentally guaranteed. This principle was, of course, used with particular vigor in the third front, in which the socio-political status of the nobility was contested, namely against the "plebeians" <sup>367</sup> of the third estate and their absolutist helpers, who sometimes did not hesitate to claim that "raison" and "raison d'être" were the only way to protect the nobility.

Etat" weighed more than "droit de nature"<sup>368</sup> or "proximité du sang. This opposition did not come from nowhere. For secularized and autonomous reason as well as the state were the instances that procured equality, while blood and natural rights (in the sense of the legal conception of the *societas civilis*) biirgten for the unabandonability of the hierarchy. The third estate, in any case, often and specifically referred to the state and the nation as the great family in which the prince was the father and the three estates were equal brothers - a view against which the nobility had to<sup>369</sup> invoke the inequality already given at birth. This natural inequality was not only made visible by the creation and observance of a highly symbolic etiquette<sup>370</sup>, but also defended by new theoretical constructions. Thus, the theory of the racial otherness and superiority of the nobility emerged only in the 17th century to ideologically support<sup>371</sup> the French nobility in its struggle against absolutism and the third estate. The stereotypical argument against equality from the 16th to the 18th century was, of course, that the dissolution of the hereditary hierarchy would lead to confusion, anarchy and, <sup>372</sup>consequently, injustice. Moreover, the desire for equality appeared to be a violation of the divine order: "vou

loir renverser la supériorité des rangs, réduire les hommes à une égalité im aginaire, ... c'est blasphémer contre la Providence," wrote Fenelon<sup>373</sup>

But there is a close connection between the defense of the hierarchy and the supremacy of the priority of the group over the individual. The individual cannot and must not break the hierarchy, because since his birth he belongs to a group which has a certain independent place within the group.

<sup>366</sup> On the divergent views of Le Laboureur and Saint-Simon, on the one hand, and Boulainvilliers', on the other, on this question, see Carcassone, Montesquieu, 11-25.

<sup>367</sup> On the pejorative use of the word in the century17., see Breysig, Entwicklung, 80.

<sup>368</sup> Citation Thuau, Raison, 234.

<sup>369</sup> For example, in the États Généraux of 1614., Picot, Histoire, III, 347(

<sup>370</sup> Such issues are also raised in the Cahiers of the Nobility, see, e.g., Brown, Prov. Opinions, (158

<sup>371</sup> Barzun, French Race, 96 f. Cf. 100 (, 122 ( (Loyseau and Adrien de Valois as predecessors of Boulainvilliers).

<sup>372</sup> See, for example, Mariana, De rege, III, =11 p. 369; Mirabeau, Ami, 254.

<sup>373</sup> Essai phil. sur le gouv. civil, VI = VII, 112.

The individual is a part of the *societas*. If the individual is presented as such, i.e. free of any original connection to a group, then the *societas* dissolves into a sum of individuals with equal rights and thus the hierarchy (at least in the traditional sense) collapses. For the maintenance of the hierarchy the affiliation of the individual to a group is indispensable. This idea has a further social-theoretical and anthropological implication, which also played an important role in the controversies after 1789. The group affiliation of the individual is of constitutive importance; man cannot be imagined in any other way than as a member of a group, otherwise he remains, as many a defender of the cause of the nobility emphasized as early as the middle of the 17th century, "une abstraction de metaphysique."<sup>374</sup> Consequently, only the individual living in a group, i.e. on a certain level of the social hierarchy, and characterized by the corresponding qualities, is concrete; everything that is assumed beyond these qualities forms an abstraction, and therefore characteristics that the individual as such may possess or develop cannot provide the yardstick for the construction of social organization. It is against this background that the old dispute, which has flared up again since the 16th century as a result of the socio-political shifts mentioned above, must be understood as to whether birth or virtue is to be<sup>375</sup> valued more highly. Behind the plea for virtue, however, was the egalitarian intention, since virtue can apparently be achieved even by people of modest origin. The conservative defenders of the primacy of birth did not deny this fact, but even those among them who were ready to concede that people are born intrinsically equal in terms of "raison" and „humanite" added that high birth was a more viable starting point. They added that high birth offered a more favorable starting point for the attainment of virtue, and that even on the basis of the criterion of virtue, the preference was, all in all, given to<sup>376</sup> the nobility. Thus, in the end, virtue, or at least the better disposition to it, appeared, as it were, as a collective quality of a certain group and not as something that could be attained by each individual exclusively by virtue of his own effort and independently of his social status. It was not moral concern but the antagonism between conservative hierarchical collectivism and absolutist or bourgeois egalitarian individualism that was decisive in this dispute.

The conservative view of the original constitutive bond of the individual to a certain group and thus to a certain hierarchical stage was socially rooted in the reality of the *oikos*, which, as is repeatedly seen in the Following Aristotle, the fundamental unity of the *societas* was recalled

<sup>374</sup> Thus Daniel de Priezac, quoted in Sutcliffe, Balzac, 147f.

<sup>375</sup> On this point, Bitton, Nobility, ch. V.

<sup>376</sup> Thus, for example, Boulainvilliers, Essais, f7. Cf. the passage mentioned<sup>374</sup> in the note.

constituted<sup>377</sup>. The affiliation of the (vast majority of) individuals to an *oikos* as an elementary and primary fact of their lives implied two things: that social mobility was kept within narrow limits, and that the individual was not state-independent, i.e. not directly subject to the power of government but to his or her own *oikos* leader. Just as in the modern state the existence of institutions to which an impersonal, i.e. generally regulated and fixed, relationship is possible goes hand in hand with the state-immediate nature of the individual as such, so the absence of the latter in the *societas civilis* implies the predominance of the personal over the impersonal or institutionalized relationships at the various levels of social life. The relationship between the nobility and the peasants<sup>378</sup>, as well as between the nobility and the king<sup>379</sup>, appears to be personal, i.e. subject to the requirement of mutual loyalty. Since the nobility declares this type of relationship to be the best regulation of coexistence within the *societas civilis*, it fights against the<sup>380</sup> state immediacy of the individual as such, which absolutism had in mind, because he is not regarded by the prince as a nobleman or as a peasant (i.e. because of his affiliation with the king). The author is not interested in the state of the individual as such, but rather in the state of the individual as a human being or as a subject without any further privileges.

The famous theory of the *pouvoirs intermediaires* ultimately arose from this rejection of the state immediacy of the individual - in its connection with the defense of the primacy of the group and of birth, and with the rejection of individualism and the "abstract" conception of man. The complex of ideas on which it is based becomes visible, for example, in a complaint of the Bohemian Stancle to Joseph II, in which the decisive passage reads:

One cannot even have an abstract idea of a state consisting only of the monarch and a single class of subjects. . . In between there must necessarily be middle classes, each of which rules over a part of the people.<sup>381</sup> The monarch, therefore, must not touch the rule of the *oikos* leaders over their own people. If the governmental power challenges this rule, if it removes the individual from the group and subjects him to its own law, the equality of all before it arises and at the same time what is despotism and tyranny from the point of view of the nobility. That is why Fenelon wrote: „Les plus grands partisans de cette egalite imaginaire ont ete toujours les maitres Jes plus despotiques"<sup>382</sup>. The task of the *pouvoirs intermediaires* is precisely to promote the disengagement of the

m S. e. g. Smith, De rep. Angl., I, 11; Hooker, Eccl. Pol., I, =10,4 I, 242.

<sup>378</sup> About this relationship according to the - certainly not untypical even for the 19th century - view of an arch-conservative noble grudge landowner of the 16th century see Sturmberger, Tschernembl, ff, f6078.

<sup>379</sup> Cf. Mousnier, Venalite, 531et seq.

<sup>380</sup> Cf. Louis XIV's instruction fiir his enke!, Koser, State, 234.

<sup>381</sup> Cited in Mitrofanov, Joseph II, 628.

<sup>382</sup> Essai phil. sur le gouv. civil, IV = VII, 109.

The horizontal conception of the state, in which all subjects of the sovereign are on the same level, is contrasted with a vertical one. The horizontal conception of the state, in which all the subjects of the sovereign are on the same level, is contrasted with a vertical one, according to which the subjects are divided from the beginning into different corporations, which follow one another<sup>383</sup> in a descending line "comme les anneaux d'une grande chaîne. The hierarchy among these corporations is already given by the diversity and different importance of their functions and goes back to the origins of the community, it is therefore absolutely necessary<sup>384</sup> for its existence.

The diversity of functions, and thus the hierarchy of corpuses, is not rooted in the will of the government, but in the legal conception of the *societas civilis*, which revolves around the principle of *justitia distributiva*, *sum cuique*. It is worth quoting a statement of the Paris Parliament that clarifies the connection of this principle with the conservative leitmotifs discussed above: "La première règle de la justice est de conserver à chacun ce qui lui appartient, règle fondamentale du droit naturel, du droit des gens et du gouvernement civil, règle qui ne consiste seulement à maintenir les droits de propriété, mais encore à conserver ceux qui sont attachés à la personne et qui naissent des prérogatives de la naissance et de l'état. De cette règle de droit et d'équité il suit que tout système qui, sous une apparence d'humanité et de bienfaisance, tendrait ... à établir entre les hommes une égalité des devoirs et à détruire ces distinctions nécessaires amènerait bientôt le désordre, suite inévitable de l'égalité absolue "...<sup>385</sup>. This text was written in 1776, but it does not contain any new thought, but only brings together a long tradition of political thought, which begins with the definition of *justitia distributiva* by Plato and Aristotle, reaches a high point in the Middle Ages in the Thomistic reception of this principle in connection with the organic-hierarchical conception of the state<sup>386</sup> and continues in the

<sup>383</sup> Thus the Paris Parliament in the Remonstrance of 12. 1776. = Flammermont, III, 345.

<sup>384</sup> Remonstrance from 2nd-4th = 3.1776 Flammermont, 287f111, As functions of the nobility.

As has been the case for centuries, the functions mentioned here are the advising of the king and the defense of the community in war. Precisely because the nobility emphasized this latter function, it had to accept the reproach since the emergence of standing armies, i.e. already since the 16th century, that it no longer had a function to fulfill, therefore its leading position could no longer be justified, etc. See Picot, *Histoire*, II, 48 (document from the year 1560); Bitton, *Nobility*, chapl. 11. The ridicule of martial virtues on the part of bourgeois authors (Speier, *Militarism*, 326 ff; Thuau, *Raison*, 154 ff) was answered by the (French) nobility with contempt for the bourgeois spirit and the thesis: "L'Etat est militaire dans sa fondation" (Mousnier, *Fureurs*, 27), which eventually led to Boulainvilliers' theory of erosion (*Histoire*, I, 36ff.). The defense of the functions and thus the leading position of the nobility forms the background for the socio-philosophical glorification of war, which the conservatives undertook after 1789 in their particular struggle against liberal-democratic (admittedly polemically meant) pacifism.

<sup>385</sup> Remonstrance from 2.-3. 4.1776 = Flammermont, I, II f278

stereotypical repetition of "suum cuique" by all conservatives since the 16.<sup>7</sup>As we already know<sup>388</sup>, the legal principle that everyone is entitled to his own right did not mean that everyone was entitled to the same thing; rather, it was intended to establish and consolidate the clear distinction between the rights of one social group and those of another, and thus the hierarchical division of all existing rights.<sup>38</sup> From the conservative point of view, then, there was no contradiction between the definitional generality of right and the equation of right and privilege. As Hooker explained, "privileges, immunities, exceptions, and dispensations" were merely expressions of a "special equity" by virtue of which each individual case was treated according to its particularity; they did not, therefore, constitute a violation of general laws, but, on the contrary, aimed to do so,

If the conception of law is summarized in the formula <sup>389</sup>"cujus est unicuique suum tribuere", then one does not speak of<sup>390</sup> "freedom" and "justice" (the later liberal-democratic singular implies that one and the same freedom and justice applies to all individuals, that all individuals are equal), but of "freedoms" and "justices". Freedom, in so far as it is spoken of at all, does not constitute an independent or even hypostasized magnitude, but only the concept of existing particularities, of certain privileges<sup>391</sup> in each case. These privileges, the preservation of which is readily equated with the preservation of *boni publici*<sup>392</sup>, are supposed to be the very own property of the nobility and not suspect acquisitions of recent date or acts of grace of the princes, as the latter tried to prove for<sup>393</sup> understandable reasons. Thus, they are ultimately rooted in the same comprehensive order that manifests itself in the entire hierarchical structure of the *societas*.

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<sup>387</sup> See, e.g., Ribadaneyra, *Tratado*, II, = 6p. 245; Coke, *II Inst.*, *Magna Charta*, cap. 29 = P. 56; Moreau, *Choix*, I, 390; *Mirabeau*, Ami, 205. p. u. ch. III, sec. 3a.

<sup>388</sup> See section of this 2chapter.

<sup>389</sup> *Eccl. Pol.*, V, 2-3 9, = II, 39.

<sup>390</sup> Two examples among countless: *Der Stancle des Herzogthums Oesterreich unter der Ens historische und diplo-matische Ausföhrung üiber sämtliche ihnen zustehenden Rechte und Freiheiten* (1619) = *Historische Actenstücke*, Heft 51., 18; *Erklärung der preußischen Stancle vom 14.12.1661 Urkunden und Actenstücke*, XV, etc. 700, 702, 703

<sup>391</sup> „immunitates,... quibus omnis fere provincialium libertas continetur", so *Tschernebl*, quoted in *Sturmberger*, *Tschernembl*, 103 note 64; where „hergebrachte Privilegia Statuum . . . annulliert und von Kräften kommen", remains "keine umbra libertatis übrig", means. the Prussian knighthood in its vote of March = 1683 *Urkunden und Actenstücke*, X, 600.

<sup>392</sup> *Die clevischen Stancle an den Kurfürsten*, 27. 6. 1656 = *Urkunden und Actenstücke*, V, 852.

<sup>393</sup> S. *Seyssel*, *Monarchie*, II, = 19 p. as well as 157, the interesting discussion of the *Stancle of Jülich-Berg with Count Palatine Wolfgang Wilhelm from 1625 Landtagsakten von Jülich-Berg 1624-1653*, 193ff; cf. the argumentation of *Boulainvilliers* on the conception of *droit de noblesse*, *Essais*, 10 ff; see also *Back*, *Herzog*, 166, 186 f.; *Petersohn*, *Fürstenmacht*, 112.

The assumed divine origin of the law supporting the *societas* already indicated that the aforementioned order did not want to be merely secular, but claimed a higher, metaphysical legitimation for itself. The social inequality, the primacy of the group over the individual, and the hierarchical division of the groups among themselves appear as a reflection of onto logical basic realities and at the same time as norms and commandments that result directly from these basic realities. The normative and the ontological meaning of the law is not distinguished at all, as e.g. Hooker's explanations show, because despite the admitted effect of the *causae secundae* everything finally derives from God, in whom being and value or norm are one. The law of God permeates and models also the law of nature and of man - in general everything, even what at first seems to be "non conformable to this eternal law". Thus it can be said of the Law: "her seat is the bosom of God, her voice the harmony of the world: all things in heaven and earth do her homage"<sup>394</sup>. If the law of God is all-encompassing, there is an internal analogy between cosmic and social order: this was emphasized by the French devots in the first half of the seventeenth century, in order to draw the conclusion that the evil *politiques* would cause "desordre dans la creation". The devots believed to discover parallels between the harmonious combination of the four elements in nature and the interaction of the various components of the community, and saw the exemplary nature of creation above all in the fact that it was structured in stages or hierarchically. From this structure of nature they took two socio-political imperatives: that good politics must proceed only slowly and cautiously in order to avoid any break with what has gone before, and that no leveling of the given hierarchical gradation may be undertaken, because a different organization of the social as well as of the natural whole would be<sup>395</sup> impossible from the outset and therefore only disorder and anarchy could be expected as a consequence of equality. It is understandable that inequality and hierarchy in the "plan de l'Univers" were registered particularly frequently and in accordance with the conservatives<sup>96\_3</sup> But precisely those features of the traditional picture of the cosmos, which were dear to them, were destroyed by the mechanization of the world view, which took place in the first half of the 17th century. In the world machine there were neither hierarchical gradations nor teleology - and therefore the readiness with which also *lutists* appropriated the teachings of the new physics is not surprising; Hobbes is only the most prominent example<sup>397</sup>. The conservative hostility against the world machine

<sup>394</sup> Eccl. Pol. I, 1-4; 3, I, 48.; I = 16, 8 I, ff204, 228, 285.

<sup>395</sup> On the views of the devots, see Thuau, *Raison*, ff144 (with good evidence).

<sup>396</sup> See, for example, the Remont rance of the Paris Parliament of 2-4 = 3.1776 Flammermont,

III,  
279.

<sup>397</sup> About the sympathies of the French *etatistes* for the mechanical world view, s. Thuau, *Raison*, cf. 386, 269.

becomes understandable if we visualize what the ideologues of the *societas civilis* projected into the cosmos in order to derive it from it and thus to justify and legitimize it ontologically. The same constellation explains the far-reaching conservative rejection of Newtonian mechanics after 1789 and the attempts to develop a dynamic or magical physics in its place - attempts that are not coincidentally associated with names like Novalis, Schlegel, Schelling, Gorres or Baader.

### *f Friihe Criticism of the Modern State and the Capitalist Economy*

The extent of the disgust and horror that the budding modern state inspired in the conservative defenders of the *societas civilis* can be seen in their frequent accusation that this state was hardly different from a "Oriental despotism" such as the *Türkei*, pointing to the elimination of birthrights and the favoring of obscure ascenders, to administrative tyranny, or to the taxation of the nobility. These were indeed essential aspects, or at least symptoms, of the new reality whose outlines were becoming increasingly clear. We have already explained why the nobility itself could not be reassured by its *lowenantei*] in the young state apparatus with regard to future prospects<sup>399</sup>. The swelling of the state apparatus and the conflicts between the prince and the nobility created free space for the advancement of non-nobles, while on the other hand the same swelling had financial and economic or social consequences, which also worked in favor of the nobility: it had to be financed by new taxes (which raised the question of tax exemption or taxation of the nobility). At the same time, it automatically increased and strengthened the initiatives aimed at<sup>400</sup> changing the existing social structure to meet the needs of the new state (and often of the bourgeoisie and the new economic forms); Seyssel had already noticed that the royal officials were constantly thinking of some "novite sur les droits et prerogatives" of the nobility.<sup>401</sup> Let us leave here first of all the

<sup>398</sup> See, e.g., Buchana n, *De iurc*, 70; Moreau, *Choix*, I, 288 f.; Boulainvilliers, *Essais*, 299f., as well as *Histoire*, Preface u. I, 253. Even in Malesherbes' view, the administration of the *king commissars* would ft.their „au veritable despotisme oriental," see Egret, *Louis XV*, 209...

<sup>399</sup> See section a3 of this chapter.

<sup>400</sup> On the *Politiques'* projects for centralizing the administration and liberalizing the economy, see Figgis, *Pol. Thought*, 145 ff; on Obrecht's semi-utopian but very significant plans, cf. Maier, *Polizei*, ff150

<sup>401</sup> *Monarchic*, =11,19 S. 157.



The complex question of the relationship between the structure of the state apparatus and the "old customs and habits" of the "doctores". and the consolidation of the new economic forms aside, in order to

The conservative diagnosis, as typically formulated by Coquille, is as follows. The conservative diagnosis, typically formulated by Coquille, is as follows. The "multiplication monstrueuse des offices" causes an increase of the tax necessary for the remuneration of the civil servants, while the office purchase <las additional obel> brings with it that/3 itself the Inhaber of the

purchased office makes use of all conceivable means to cover its costs and to to win over<sup>402</sup> as many as possible. The situation up to the end of the ancien regime was described in exactly the same way, as the Cahiers of the nobility from the time of the Fronde<sup>403</sup> or the analyses of Fenelon<sup>404</sup> and Mirabeau<sup>405</sup> testify. The complaints about the social consequences of the rise of the civil servant class also remained stereotypical. The elevation of royal civil servants to the nobility implied that it was not tradition, but rather the will of the rulers that determined the composition of the ruling upper class, and that in this respect, too, the power of government had gained the upper hand over the *societas*; The weakening of the coherence and prestige of the nobility, caused by the new nobilizations, is aggravated by the fact that the competition of the old nobility with the upwardly mobile ones drives them to find new sources of money through *mesalliances*, etc. etc.<sup>406</sup>. For the pioneers of the *societas civilis* it was already clear that the loosening of social hierarchy as a result of the suppression of the "seigneurs" and the demand of the "vilains" was an indispensable sign of tyrannical government. be<sup>407</sup>. The career of the civil servant was considered to be suitable to help<sup>408</sup> "unworthy" persons to gain wealth and prestige. A minimal requirement to limit the obel was that/3 <las income of a civil servant or minister never exceeds the one In its modesty, this demand is truly eloquent.<sup>409</sup>

With regard to the ideological aspect of anti-absolutist conservatism, it is important to note the view, repeatedly expressed since the 16th century, that state officials were the bearers of a new spirit and an attitude hostile to tradition. Already the Württemberg stancle were aware of the changes, which

<sup>402</sup> Discours , ...I, A280; Dialogue , ...I, A233. Seckendorff nannte die Amterkauflichkeit "deceitful way to suck the subjects," Christian State, 11, 2§ =6 p. 349. Cf. Ribadaneyra, Tratado, II, 10 = p. (270

<sup>403</sup> Brown, Prov. Opinion, (151

<sup>404</sup> Examen , ...III § XIX = VII, 90.

<sup>405</sup> Ami, ff.254

<sup>406</sup> S. Boulainvilliers' typical and accurate description of the situation, Essais, 251; Histoire, I, ff.313

<sup>407</sup> Brutus, Vindiciae, III = S. 200.

<sup>408</sup> Moreau , Choix, II, 422.

<sup>409</sup> Thus Fenelon, Examen , ...III § XVI = VII, 89.

had-<sup>410</sup>

Such statements often took the form of reproach

Coquille, who also thinks so, attributes the alienation of the "docteurs" from the world to their formal jurisprudence, which was shaped by the Roman law. Coquille, who also thinks so, attributes the unworldliness of the "docteurs" to their formal jurisprudence, characterized by <las Roman law and therefore abstract way of thinking, which makes them incapable of understanding <las customary law, i.e. <las empirically given in its

Capture and treat<sup>41</sup> simplicity and vividness-<sup>1</sup>

Aul3er de m soil after

Coquille attributed the hostility to tradition of royal officials to the fact that they were paid and carried out their activities only for the sake of their own material interest, while the native nobility had an intimate bond with the country and its people, for whose welfare they were not concerned<sup>412</sup>. Boulainvilliers said the same thing about the Intendants, that they destroyed "les liens sacrez de la Societe", i.e. the patriarchal loyalty between master and servant, and practically taught the people "a vivre atentifs a nos seuls interets, c'est-a-dire clans Jes dispositions ou les Sauvages sont a l'egard Jes uns !es autres"<sup>413</sup>. The hostility to tradition of these

The "gens de plume et d'ecritoire qui ont, a force de projets, d'ordonnances" et de reglements, change la constitution subalterne de l'Etat" (gens de plume et d'ecritoire who have, a force de projets, d'ordonnances et de reglements, change the constitution subalterne de l'Etat), was clearly reflected in their view of the feudal past, in which they saw<sup>414</sup> only anarchy and disorder. In view of later developments, we note here two things, i.e., on the one hand, the origins of conservative intellectual cri tic in the complaints against doctores and gens de plume, and, on the other hand, the overriding conclusion that the two types of politics, namely absolutist and conservative, would be reflected in two different types of people. The two types of politics, absolutist and conservative, would be embodied in two different types of people, one characterized by abstract thinking and the dominance of lower instincts, while the other would be guided in its social behavior by a love of reality and tradition and by patriarchal responsible ideas and feelings.

From such findings and judgments, the nobility now fights against the influence of the officials on the king, who allegedly separate him from his "populus", deprive him of the true knowledge of the situation and the opinion of the public, etc., etc <sup>415</sup>. The doggedness and elaborateness with which the problem of the royal "advisers" is treated<sup>416</sup> in the political treatises of the 16 century reflects, of course, the growing importance of the monarch's decisions precisely because of the strengthening of absolutist power. Since/3 of the

<sup>410</sup> Wilttrtemb. Landta gsak ten, I, 174.

<sup>411</sup> Discours , ...I, B- A276277; Coutumes de Nivernois, 1, 11,B-43 B.

<sup>412</sup> Histoire de Nivernois, I, 343B. Cf. Doolin, Fronde, 152ff.

<sup>413</sup> Histoire, Preface (without page numbers).

<sup>414</sup> So Mirabeau, Ami, (59

<sup>415</sup> See, e.g., Beza, De iure, VI = p. (64; Bailey, Writers, ff.384



The fact that the struggle for the monarch's considerably enhanced will was often waged as a struggle for his advisors had a tactical advantage for the nobility: direct attacks against the person of the king could be avoided, the errors committed could be blamed on evil intriguers, and the paths to an acceptable settlement could be kept open. In addition, the king was not denied the right to have personal advisors, but the "regis consiliarius" was distinguished from the "regni consiliarius": While the former lives at court and his powers are more technical, the latter belongs to the (high) nobility, he is an agent of the "populus" and lives in the countryside, whose situation and mood he knows from experience Brutus<sup>417</sup>, who shares this distinction with Hotman and speaks of "officiers de Roy" in contrast to the "officiers du Royaume", Brutus, who shares this distinction with Hotman and speaks of "officiers de Roy" as opposed to "officiers du Royaume,"<sup>418</sup> shifts the focus of power to their circle and regards the king merely as "President au milieu d'eux." Here the familiar leitmotif of the equality of essence and interests between the first and the nobility, which makes any separation or even competition between governmental power and *societas* seem inconceivable, is echoed anew. This leitmotif was varied by the conservative enemies of absolutism, who implored the king to surround himself with (high) noble advisors.

The king is said to have had<sup>419</sup> his own will and to rule himself only when he is advised by nobles. As they assure, the king has his own will and governs himself only when he is advised by nobles, otherwise he falls victim<sup>420</sup> to his own ministers.<sup>9</sup>

Such assurances, for all their hypocrisy, contained a historically valid core. For they alluded to the traditional view that the will of the king was only the personified will of the *societas* as the epitome of the *oikos* leaders; accordingly, the ensemble of king and his (high) noble councilors could be seen as the symbolic miniature of the seamless unity of governmental power and *societas*, where any division and opposition of state and society is excluded. What guarantees this unity is the fact that the same persons perform functions in the government and in the society at the same time and in the same capacity. Thus, no state authority can emerge that would be separate from or even hostile to the power within the *societas*. The conservatives, however, do not seek to limit the expansion of the state only to the highest level of the royal council, by making the

Ministers declare war. The same goal they have in mind for the whole administration, which remains self-governing (of the lords of the *societas*, of course, who in their own view are the country<sup>421</sup>). In this sense, Fenelon proposed the assumption of all the powers of the royal Intendants and financiers by the local Stancle, which would<sup>422</sup> meet at the pleasure of the people and settle the question of taxation. Fenelon knew how the swelling of the state bureaucracy was linked to the creation of more and more laws and the growing opacity of the jurisprudence: The slogan "Peu de juges - Peu de lois" corresponds to the desire for a reduction of the state<sup>423</sup>. Almost half a century earlier, Hotman raised his voice<sup>424</sup> against the proliferation of lawyers and litigation. Since the nationalization of the judiciary greatly contributed to the growth of the bureaucracy, and since it was a process in which the opposition of governmental power and society became particularly visible, it provoked very strong protests, based mainly on two arguments: that the cost of trials before often remote state courts and often money-grubbing state judges was unaffordable for the mass of the people, and that special judges could not actually judge; Jurisprudence presupposes an intimate relationship between the judge and the defendant, a relationship of strict love and concern that can only exist between the noble lord and his people.<sup>425</sup> Thus begins the counterposition of "dead law" and "love" that was so often used after 1789 to justify patrimonial jurisdiction<sup>426</sup>, serfdom, and so on. etc.

Finally, the nobility fought against the development of the modern state by demanding the reduction of state expenditures and court costs, and by opposing the transformation of "voluntary" and one-time financial contributions into<sup>427</sup> regular taxes, as well as the respective tax increases. He did this regardless of whether the taxation affected him or not, and we know how: taxes that went to the state could no longer go to the nobility, while at the same time direct taxation by the state at least indirectly transformed<sup>428</sup> the respective subjects of the nobility into subjects not directly subject to the state.

<sup>417</sup> Hotman, *Francogallia*, XII = pp. 296, 298.

<sup>418</sup> *Vindiciae*, III = p. 108 f. Cf. 141 f., where the interesting division of the *Officiers du Royaume* into those who deal with the affairs of state as a whole (Marechaux, Pairs) and those who administer only one province (Dues, Marquis, etc.).

<sup>419</sup> See, e.g., Coquille, *Dialogue...*, I, A215, A230; *Histoire de Nivernois*, I, B-A389390; *Questions*, V = II, 2, 130; Moreau, *Choix*, I, 233, cf. Doolin, *Fronde*, 70 ff, 143 f.; Boulainvilliers, *Essais*, O173. See the Plane of Saint-Simon and Fenelon in this respect, s. Treca, *Doctrines*, 136ff., 163ff.; Gallouedec-Genuys, *Prince*, ff. 125

<sup>420</sup> Moreau, *Bibl.*, II, 14; Saint-Simon, *Lettre anonyme* = *Memoires*, III, 1260ff.

<sup>421</sup> See section 3d of this chapter.

<sup>422</sup> *Plans de Gouvernement*, II, § III = Vil, 183f.

<sup>423</sup> A. a. O., II § VI = VII, f187.

<sup>424</sup> *Francogallia*, XXVII.

<sup>425</sup> Coquille, *Histoire de Nivernois*, I, B437; *Discours...*, I, A279.

<sup>426</sup> S. ch. III, sec. 4a.

<sup>427</sup> Cf. Spangenberg, *Vom Lehnstaat*, 133.

<sup>428</sup> See the evidence cited in notes 131 and 157 of this chapter. Cf. Brown, *Prov. Opinions*, 141, 144 (the *Frondeurs* openly admit that the reduction of the income of the lower class by the increase of the waist affects their own income); Coquille, *Hist. de Nivernois*, I, 429 A (it was a mistake of the nobility to agree to the taxation of the Third Estate); Boulainvilliers, *Essais*, (153) only the Seigneur may tax the own  
Impose taxes on people, not the king).

However, moderate taxation also challenged the expansion of the state in another way: it was accompanied by the formation of a bureaucracy, which took care of the collection of taxes and the state budget, but above all it provided the government with additional means, which partly strengthened and partly expanded its independence from the *societas*. The question of taxation therefore played an important role<sup>429</sup> in all the disputes between the nobility and absolutism. For, as the Prussian land councils put it, "almost nothing can be said to interfere more with our liberties than when contributions are announced so often and so often sine scitu et consensu ordinum, and are levied and collected by military execution<sup>430</sup>. Since it was about the liberties, the arguments against involuntary taxation had to be drawn from the legal view of the *societas civilis*. One

On the other hand, reference was made to the *justitia distributiva*. On the other hand<sup>431</sup>, the preserved distinction between king and tyrant was stressed: the king as the supreme guardian of the *justitia distributiva* was not a "*dominus bonorum, quae possidunt subditi priva tim*"<sup>432</sup>. As one remembers, the king could originally tax<sup>433</sup> only the people of his own domain. The memory of that glorious time is connected with the demand for the unpredictability of the crown property; because it is expected that a good king covers<sup>434</sup> his expenses (which are at the same time the "state expenses" in a time in which this thing and this concept do not exist yet) from the income of his property. The wish that this good custom should remain can be translated sociologically into the sentence that the king should be the greatest feudal lord among several, but not the bearer of a governmental power whose autonomy has a completely different meaning than feudal autonomy: Autonomy here means the ability to demand and get from the *societas* what one wants, and then to dispose of it according to one's own judgment. By the conservatives for

<sup>429</sup> The Liguists named them among the alleged reasons for their revolt (*Memoires de la Ligue*, III, 526:524, pamphlet from the year 1589 entitled: *Les causes qui ont contrainst Jes Cacholiques A prendre Jes armes*) and promised a tax haven (Yardaru, *Conscience*, 247ff; cf. Weill, *Theories*, 222).

<sup>430</sup> An den Kurfiirsten, =26.2.1659 Urkunden und Actenstucke, XV, 453.

<sup>431</sup> Thus, for example, GentilJet, *Discours*, 250. The Parisian Parliament spoke of the „Joi immuable de la propriete" and of the „droit de propriete, ce droit si precieux A l'homme", *Remontrance* of the respectively 12.11.1774 I = 6.1766 Flammermont, and 11.1.240 II, 575.

<sup>432</sup> Thus Mariana, *De mon. mut.*, I = p. 249; cf. De Rege, III, =7 p. ff321. On the For the unanimous attitude of the Spacscholastics to this question, see Laures, Mariana, 204ff. For statements by conservative imperial publicists, see Link, *Herrschaftsordnung*, 164, cf. 149; similar ones from the time of the Fronde, in Doolin, *Fronde*, 112. In the late period of absolutism, Piitter at least fought for the "indemnification of anyone who had to take something in the way of rights for the common good" (*Begriff*, § 66).

<sup>433</sup> See, for example, Coquille, *Coutumes de Nivernois*, VIII = II, A1, 128.

<sup>434</sup> Typical treatment of the question in Hotman, *Francogallia*, IX; likewise Brutus, *Vindiciae*, III = p. ff161. Cf. Moreau, Choix, I, 391.

the autonomy of the feudal lord, they deny the autonomy of the modern sovereign. This is also the aim of the demand for drastic savings at court, which is<sup>435</sup> raised again and again. For the increase of the costs of the court was tantamount to an expansion of the influence of the government power (e.g. pensions), which in turn was accompanied by an increase of taxes and an enlargement of the „The "state budget" had to go hand in hand with the "unilateral state taxation". Despite all resistance, however, the recognition of the unilateral royal right of taxation has been gaining considerable ground<sup>436</sup> since the second half of the 16. century, which meant a general enforcement of modern statehood, in the form of the fundamental distinction between private and public. The denial of the royal right of taxation was based on the medieval mixture of the two spheres, by virtue of which the royal expenditures were regarded as personal property.

matter of the king were considered<sup>43-7</sup>. Now that the confederation has When the state declares expenditure to be a matter for the *societas* and collects taxes in the name of the common good, it ipso facto gives rise to the concept of the public and thus also to the counter-concept of the private. The conservative struggle against the expansion of the modern state was also a struggle against the separation of the private and the public - and not only in the question of freedom of conscience.

Conservative nobles were aware not only of the consequences of the development of a modern state apparatus, but also of those of the development of new forms of economy and life. Let us begin our remarks on this point with a reference to the aristocratic aversion to the towns and cities.

<The social and economic life connected with them - a reluctance which from early times was combined with military confidence in the social consequences of the autonomous growth of the cities, so that already Count zu Solms demanded<sup>438</sup> a radical reorganization of the city government, namely its takeover by nobles. Before we go into the central economic and social aspect of the relationship between the nobility and the emerging modern city, it should be briefly mentioned that the connection between the development of the urban system and the expansion of governmental power did not remain hidden from conservative observers. When Coquille disputed the legislative competence of Paris for the entire country and defended the universal validity of the respective provincial law, he emphasized that Paris owed its size and charisma exclusively to the favor of the kings, who usually stayed in this city-9<sup>43</sup> Precisely because of the coherence of the criticism of the absolutist state with the dislike of the city, in

<sup>435</sup> See, for example, the complaint of the Wiimembergische Landschaft of 26. 6. 1514 = *Wiirttemb. Landtagsakten*, I, 176 (; Mariana, *Demon. mut.*, XIII = p. 297 ff.; Fenelon, *Plans de gouvernement*, II § II = VII, 183.

<sup>436</sup> Evidence in Church, *Const. Thought*, ff.255

<sup>437</sup> Spangenberg, *Vom Lehnscaac*, 134.

<sup>438</sup> Uhlhorn, *Count of Solms*, 157.

<sup>439</sup> *Coutumes de Nivernois*, II, A1,3.

In the conservative literature, the contrast between "town and country" has been replaced by the contrast between "farm and country". And as in the case of the juxtaposition of state officials and nobility, so here too the social contrast is illustrated and dramatized by its translation into the anthropological. The (caricatured) human type of the courtier is compared with the (idealized) human type of the nobleman living in the countryside, and the servility, impudence and deviousness of the former are contrasted with the honesty, generosity and loyalty to duty of the latter, whereby the extolling of the virtues of the uncorrupted nobleman is not infrequently accompanied by a glorification of his living and working environment, i.e. free nature, and with a corresponding rejection of urban life<sup>440</sup>. In Mirabeau's work, we encounter in a typical form the connection between the criticism of the court or the "degenerate" court nobility and the criticism of the urban culture and way of life, which was often established during the two centuries before his work was written. Mirabeau longs for the old simple and natural customs of the nobility living in and from the countryside, while the alleged refinement of the court nobility appears to him as decadence.<sup>441</sup> The change in the nobility's attitude to life as a result of their alienation from the countryside is accompanied by a visible impairment of their position and ability to rule. For, according to Mirabeau, this was based on

a "rapport direct du seigneur à son sujet", on a patriarchal behavior, on a If, however, the procureur takes the place of the seigneur staying at home, hardly anything of these ties remains; their absence, however, is a sign of the moral character of lord and servant<sup>442</sup>. In addition, there are the economic and social consequences of the alienation of the nobility from the land, as manifested in the abandonment and impoverishment of places that the local household of a great lord is able to revive<sup>443</sup>. Mirabeau does not believe that flourishing cities could make up for the impoverishment of the countryside; on the contrary, what shines in the cities is bought at the disproportionately high price of this very impoverishment, and therefore we are dealing here with an "accroissement fictif," a pseudo-prosperity without a firm foundation<sup>444</sup>. Nothing less than praise, then, would serve that government which encouraged the establishment of the nobility in the city and at court, so that the designation "gentilhomme de campagne" would finally become a "fictitious prosperity".<sup>445</sup> Mirabeau's vision of the future form of such a government is alarming. Since, like other conservatives before him, he sees the connection between urbanization and the swelling of the state biro-

<sup>440-0</sup> On these motifs in England in the early nineteenth century 17., see Lee, *Ideal*, 221ff. ff.234

<sup>441</sup> Ami, 85(

<sup>442</sup> A. a. O. , 62ff.

<sup>443</sup> A. a. O., 83.

<sup>444</sup> A. a. O. , 116.

<sup>445</sup> A. a. O., 79.

If the author recognizes the importance of democracy, he assumes that the final result of the development he describes and deplores will be<sup>446</sup> an omnipotent and omnipresent government, a "gou vement oblige de decider de tout".

In the conservative rejection of "luxury," criticism of the court nobility and urbanization and criticism of the new economic forms flowed together, whereby social and cultural critical aspects remained inseparable from one another here as well. The addiction to "luxury" that began with the transformation of the landed nobility into court nobility meant a growing dependence of this stratum, whose economic existence was still based on landed property, on goods produced outside the agricultural economy; it meant the loss of the self-sufficiency of the traditional economic form in favor of new forms of economic activity, which was reflected in the relative impoverishment of the nobility as a whole. This is how this situation is freely summarized in today's language, but it was already in Seyssel's mind when he warned<sup>447</sup> the nobility against being entangled in the trappings of trade and impoverishment as a result of greed and acquisition of precious products. But the possibility to live luxuriously defined and consolidated the status of individuals or groups within a court society that was not only composed of (high) nobles and that provided the framework within which those very individuals or groups competed with each other. To the extent that other groups outside the (high) nobility participated in the pursuit of luxury, that is, to the extent that the (higher) nobility and the (higher) civil service were the two main parties in this competition, two important consequences resulted, which were described from a conservative point of view as follows: on the one hand, the (higher) civil service was forced to "shell out the land" through new tax burdens, etc., and on the other hand, the (higher) civil service was forced to "pay the taxes". On the other hand<sup>448</sup>, the acquisition of luxury and status by all kinds of upwardly mobile "gens de neant" led to an intensification of social antagonism and a noticeable loosening or even a transformation of the social hierarchy<sup>449</sup> based on birthrights. The decay of morals connected with all this, the "gigantism" and the "waste", "which corrupt the nobility ..." are described in distorted colors. corrupt" <sup>450</sup>The frivolity and the often laughable effort to keep up with the latest fashions<sup>451</sup>, the slackness, the loss of the martial virtues of the nobility, the hardening of the all-calculating souls and the shallowness of the spirits, which is to the detriment of the sciences and the professions, are all described in colorful detail.

<sup>446</sup> A. a. O. , 123.

<sup>447</sup> *Monarchic*, II, =21 p. f160.

<sup>448</sup> Moreau, Choix, II, 410; Fenelon, *Examen de conscience*. . . , III § XVII = VII, 90.

<sup>449</sup> Moreau, Choix, 460;11, Fenelon, *Examen* -..., II § XII = VII, 88; Mirabeau, *Ami*, 311.

With regard to the continuity of conservative thought motifs, Mirabeau's reference to Fenelon should be recalled (*Ami*, 268f., 318).

<sup>450</sup> Thus Seckendorff, *Christen-Staat*, II, § 3=4 p. cf187., II, 2§ = 12f.177

<sup>451</sup> Moreau, *Choix* ix, I, 438.



<sup>457</sup> Roscher, History, 241.

<sup>458</sup> Plans de Gouvernement, II § III = VII, 184.

the effect<sup>452</sup>. Finally, two points are raised that today's cultural critics also insist on: that luxury and consumption always arouse new needs, where quite superfluous things are considered to be necessary for life<sup>453</sup>, and that these "consommations en superfluités" are a "crime contre la société qui tient du meurtre et d'un homicide", since they cause<sup>454</sup> the dilution of nature to satisfy illusory needs.

In the literature of the 16th-18th centuries, the term "luxury" is used in a very broad sense, so that it often includes what was later called "luxury".

The "money economy" was the name given to it. For it is recognized that the fatal tendency to luxury is a concomitant not only of the socio-political expansion of the power of the court or the state, but also of the emergence of new forms of economy and wealth, for which money symbolically stands: it symbolizes - and at the same time carries and demands - a form of wealth that is no longer tied to agrarian use values, but rather to commercial exchange values and is thus much more mobile and dynamic. The insight into this connection is behind the (after often 1789 repeated)

The conservative assertion that the true wealth of a country lies in the number of<sup>455</sup> its people and the land they cultivate, together with its products.

Confidence and insecurity are thereby infused by the autonomization of money as an economic factor which, in its own mobility, can set all social relations in motion, even revolutionize them. Money breaks the clear, natural relationship between labor and labor yield, or between social function and wealth, and thus blurs the principles of traditional social hierarchy, while at the same time shifting the play of forces to an opaque level. This autonomization and revolutionary effect of the economic factor "money" was already opposed by the conservatives in the early nineteenth century, which was also an eventful period in economic history<sup>16</sup>. The conservatives opposed this autonomization of the economic factor "money" as early as in the 19th century, which was so eventful in economic history, as well as later, e.g. by condemning the devaluation of money on the part of governments as a dishonest taxation artifice<sup>456</sup>: At that time, "finance" was not yet called a state budget, but rather an unbalanced budget.

lige und arglistische Erpressung<sup>457</sup>, die eben durch die autonome Macht des Geldes was made possible. Fenelon also fights against this, when he is called by the general stan

expected to withdraw<sup>458</sup> "tout communément d'argent sans marchandise excepté les banquiers nécessaires". The cultural-critical aspect is again found by Mirabeau who states with a heavy heart that "le Dieu de nos jours, la finance",

<sup>452</sup> Boulainvilliers, Essais, ff; 219 Mirabeau, Ami, 274ff.

<sup>453</sup> Fenelon, Telemaque, XVII = VI, 547.

<sup>454</sup> Mirabeau, Ami, 14, 16.

<sup>455</sup> See, for example, Fenelon, Telemaque, XVII = VI, 547; Mirabeau, Ami, f10.

<sup>456</sup> Especially Mariana, Demon. mut., III = p. 255 f., as well as De rege, III, 7 = p. 321 ff. Cf. Seckendorff, Christen-Staat, II, 12§ = 5 p. 338ff.

It is eagerly claimed by all classes of society that the "esprit mercenaire" has destroyed all noble principles and has nothing but contempt for everything that cannot be turned into money; the feelings that the community are fading away, and disorder is spreading.<sup>459</sup>

The subsequent repetition of the ancient and scholastic prohibition of interest in the nineteenth century *must be understood* as an early protest against the spread and effect of the money economy<sup>16</sup>. It does not bring anything new in terms of content, but the timing remains significant. Equally significant for the new situation, however, is the fact that even in late scholastic and Jesuit circles, in which the *usura mutuat*io when a *peccatum mortale* was<sup>460</sup> spoken of, certain compromised trends emerged, which, however, did not provide a sufficient theoretical basis for the and therefore often had to<sup>461</sup> articulate themselves indirectly and with a bad conscience. On the whole, therefore, the traditional principle remained: usury is directly against the law of God"<sup>462</sup>. Who wanted to riittel against it, was iibrigens known: not the "Princeset grands Seigneurs de naissance et de <lignite", but the "riches" and the "grands en biens", namely the so-called "Trai tans et Gens d'affaires; lesquels sont... Jes plus Grands du siecle, puis que par leur argent ils sont Jes plus puissans"<sup>463</sup>. Now differentiated in the conservative The idea of the usurer is not essentially different from the merchant, and therefore the plea for the prohibition of interest was accompanied by demands for the restriction of trade. The building industry and craftsmen are to be protected from merchants, says Count zu Solms, who buy up everything and take it out of the country in order to remedy the ensuing shortage by importing it, which damages<sup>464</sup> the local crafts. Even if a demand from the trade is considered advisable, it appears that its ibermaJ3ige development, which leads to the luxury etc., as unerwiinscht<sup>465</sup>. Also morally merchants are suspicious; „inextinguibilem sitim habent lucrandi"<sup>466</sup> and more often than not, their "principal-absehen ist auf eigennutz gerichtet": with this argument, in addition to the inevitable reference to the dangers of luxury, Seckendorff, who is also otherwise "aware of the great needs of the merchants", reports against the "increase of manufactures and commercien".

<sup>49</sup> Ami, cf. 209,141,145,258.

<sup>460</sup> See, e.g., Soto, De just., VI, 1,1 = f. v181. (uncen); Vitoria, Comencarios, qu. 78 = V, ff.152

<sup>461</sup> Brodri ck, Econ. Morals, 120ff. Cf. Knoll, Zins, 116ff.

<sup>462</sup> Thus Coke, III Inst. , cap. 70 = S. 150.

<sup>463</sup> Joly, Traite, 122, cf. 126: Loans taken out by the king at high interest entail a tax increase to ensure the ri.ick payment.

<sup>464</sup> Uhlho rn, Count of Solms, 157.

<sup>465</sup> Ribadaneyra, Tratado, II, =11 pp. 278.

Concerns<sup>467</sup>. The call for the government to focus on agriculture rather than trade was still echoed<sup>468</sup> loudly in the 18th century.

It is well known that these positions were formulated differently from country to country, and that in terms of the nobility's relations with commerce, for example, the French development was<sup>469</sup> different from the English, despite noblesse commen;ant. We are interested here, however, in the genesis and structure of the various aspects of conservative ideology and not in the question of whether each of these aspects was accepted with equal approval by the nobles of Europe. It cannot be denied that the thesis of the superiority of landed property over money and trade, based on social theory and cultural criticism, was accepted in toto by the nobility; even the English noblesse commen;ante was and remained first and foremost landed nobility, for whom the gradual assimilation of industrial and commercial biirge in the course of the nineteenth century cost them some self-conquest - and many a dispute. The same is true, on the whole, of the laissez-faire principle, which many conservatives at times at least partially or in modified form approved of, even though it had to be fundamentally rejected from the conservative point of view in view of its connection with individualistic thought. It is wrong to think that the scholastics of the sixteenth century condemned<sup>470</sup> the state monopolies of the time because of some free-liberal preference for the "free market": they did so only in their struggle against absolutism, which enriched itself through these monopolies, and they did so also by pointing out the violation of the principle of just price by the arbitrary monopolistic fixing of prices. The aversion to the free acquisition and free disposal of property grew as its paradoxical but necessary connection with the complication of legislation and the swelling of the state apparatus became apparent. For example, when Fenelon opposed the testamentary disposi tions libres, he defended the very principle: "Peu de juges - Peu de lois"<sup>471</sup>. Absolutist attempts to introduce the disposition libre into the economy as a whole, i.e. to allow freedom of trade and free choice of profession, provoked the type of conservative criticism that became commonplace in the later struggle against liberalism. Against the plans for the dissolution of the guild system .

<sup>467</sup> Chris ten Sta t, II, §§13,5 , 7.

<sup>468</sup> Mirabeau, Ami, f35.; i.iber Buat-Nan ay s. Carcassone, Montesquieu, 250f.

<sup>469</sup> This difference remains despite the fact that some recent research has emphasized the participation of the French nobility in capitalist activities. Basically, the account of Carre, Noblesse, 135 ff, is still valid. On the problem, see Carcassone, Montesquieu, 221 ff. , 232 ff; Bluche, Magistrats, 222ff; Reinhard, Elite, 13 f.; Grassby, Social Status, 217, 226 f.; Bitton, Nobility, ch. IV; Richard, Noblesse, f.496,498, 500; Weis, Franz. Nobility, f34.

<sup>470</sup> Hoffner (Wirts chaftsethik, 91 ff., 113 ff.) seems to be inclined toward this view, which, by the way, is concerned with reconciling Catholic and liberal principles.

<sup>471</sup> Plans de gouvernement, II § VI = VII, 187f.

the Paris Parliament evoked the dangers of individualism and the unrestrained pursuit of profit in words that were often 1789used afterwards:

„.... desunir les membres de toutes Jes communautes, c'est detruire les ressources de toute espece que le commerce lui-meme doit desirer pour sa propre conserva tion; chaque fabricant, chaque artiste, chaque ouvrier se regardera comme un etre isole, dependant de Jui seule et libre de donner clans tous Jes ecart s d'une imagina tion souvent dereglee; toute subordination sera detruite; il n'y aura plus ni poids, ni mesure; la soif du gain animera tous Jes ateliers, et comme l'honnetete n'est pas toujours la voie la plus sur pour arriver a la fortune, le public entier, Jes nationaux comme Jes etrangers, seront toujours la dupe de moyens secrets prepares avec art pour Jes aveugler et Jes seduire" <sup>472</sup> The question was: Comment la liberte indefinie serait-elle le moyen de concilier tous les interets? <sup>473</sup>, and it concerned the whole organization of the community. It is indeed remarkable that the conservatives already argued very early on the basis of a general theory and approached the individual problems from that point of view, even if prima vista they did not touch the nobility; the defense of the urban guild system testified to the fact that even conservative argumentation was<sup>474</sup> in its way ideologically grounded and systematic.

## 5. Peculiarities of the English development from the point of view of antagonism of traditional Legal conception **and** modern idea of sovereignty

The liberal legend of the royal road of the "Occident" to "freedom" often and gladly falls back on the Whig interpretation of history and refers to England as the country in which a practically unanimous rejection of absolutism and the idea of sovereignty associated with it set the course for the fundamental agreement of social forces and thus for an organic development of freedom. The peculiarity of England, however, does not lie in the fact that it overcame the voluntaristic obstacles of modern sovereignty through greater insight and morality - no country that crossed the threshold to the modern state has been able to do this - but rather in two features of its social development. On the one hand, sovereignty was exercised here by an oligarchy which was

<sup>472</sup> Remontrance from 3 . 12.1776 = Flammermont , 346f.111,

<sup>473</sup> Remontrance from 8. -19 =5.1776 Flammermont, III. 375.

<sup>474</sup> Palmer, time alcer, f482.

On the other hand, this *Oli garchie* could not appear in the name of the modern idea of sovereignty, but, since this idea was occupied on the pan-European level by absolutism, it insisted, for polemical reasons, on the fiction of a continuation of the traditional conception of law. We shall see what objective circumstances this fiction was able to take advantage of. The failure to recognize that this is basically a polemically necessary fiction, and the confusion of this fiction with the socio-historical effect

However, the optical exchange that prevents us from recognizing the peculiarity of the of the English development where it actually lies. It should be added that England's path was by no means the inevitable result of a course of history that began with *Magna Charta*, as the legend would have it, but resulted from decisions made in the 16th and 17th centuries; this is true even if one is inclined, for good reasons, by the way, to consider the

insular situation as<sup>475</sup> an important moment in explaining England's special domestic policies.

Even towards the end of the 15th century, English political theory consisted of repetitions and variations of the *societas civilis* conception of law. Fortescue saw human law as an expression of the divine *iustitia perfecta*, and not as a the product of a sovereign (royal) will<sup>476</sup>, he invokes the will of the

Aristotle, when it comes to<sup>4</sup> the organic structure and the ethical purpose of the state, and combines statements of Thomas to gain<sup>478</sup> the formula of his political ideal - "*dominium politicum et regale*". The defense

The connotation of royal authority inherent in the word "*regale*" betrays a desire to overcome the bloody feudal anarchy that afflicted fifteenth-century England,<sup>479</sup> while the prefix of "*politicum*" implies that the danger of the "*regale*" is a threat.

The "*tyranny*", of which Fortescue can be convinced by a look at France<sup>480</sup>, is nevertheless estimated to be higher. The deviations from this overall conception, as they have gradually become concrete since the Reformation, bring to light a considerable strengthening of the "*regale*", which, however - and this is the characteristic and decisive point - is only approved under certain conditions and with regard to certain goals. The souve-

The monarch's status is highlighted in a hitherto unknown way when the fight against the papacy and the external and internal threats emanating from the Catholic powers in general are the focus of interest; on the contrary, the monarch's relationship with the Catholic Church is the focus of attention.

If the "people", i.e. the secular leaders of the *oikos*, come to the fore, then the traditional legal conception of the *societas civilis* will be asserted without further ado. This, of course, reflects the basic fact that the socio-political life of the country at that time was not determined by the struggle of the crown against the representatives of the estates, but by the struggle of the crown, which was allied with the estates, against the

and international Catholicism was<sup>48</sup> dominated-<sup>1</sup> Thereby

<sup>480</sup> *Laudibus*, XXXIV-XXXV = p. 84;78,80,82, cf. *Governance*, III- IV = p. 113ff.

<sup>475</sup> Thus Hintze, *Staat u. Ver*(, 364(49,69,

<sup>476</sup> *Laudibus*, IV = p. 10. The king is judge and war chief in the traditional sense, non potest muere leges regni sui and makes sututa only totius regni assensu (*Laudibus*, I, IX, XVIII = p. 40)2,24,. About this conception of the royal duties in the England of the 15. Jh.s. s. Chrimes, *Const. Ideas*, esp. ff, 1461f, Cf343.. Baumer, *Tudor Theory*, ch. I.

<sup>477</sup> *Laudibus*, IV, XIII = S. 10,30.

<sup>478</sup> *Governance*, I= p. 109( Cf. Chrimes, *Const. Ideas*, 315ff. 479 *Governance*, Vff. = p. ff.118

The anti-clerical and, at the same time, anti-absolutist attitude, such as that represented<sup>482</sup> by the jurist St. German, which, although the church is subordinate to the king, the king is not subordinate to the church, and the church is not subordinate to the king, is not subordinate to the church.

but wanted to submit to the good old law. The subjugation of the Church to the King means, first of all, that on the part of the civil authorities, he is<sup>483</sup> granted the potestas jurisdictionis of the Pope and of the native clergy. In this way it is understood that the said subjugation takes on the character of a permanent sovereign act, which could one day have taken control of the civil society as a whole. The unity of state and church on this basis, as we know,<sup>484</sup> had<sup>485</sup> only certain superficialities in common with the medieval notion of the two swords, <sup>485</sup>but the maintenance of the fiction was symbolic of the fact that the conquest of a part of the societas civilis (i.e., the Catholic Church) was not a matter of a single act. (i.e. the Catholic Church) was achieved through the cooperation of another part of it (i.e. most of the secular leaders), which, however, was not ready to allow the thereby strengthened royal sovereignty to go beyond the framework of the traditional at all and in principle.

!asses. Therefore, the old principle that new law is actually an interpretation of the old one was maintained as far as possible and even tried to justify<sup>486</sup> the confiscation of ecclesiastical property accordingly; above all, however, the fundamental assumption that human law is not human law had to remain inviolable.

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<sup>481</sup> Baumer, Tudor Theory, 125f

<sup>482</sup> Dickens, Reformation, 96ff. Cf. George, Protest. Int Mind, 220ff.

<sup>483</sup> Baumer, Tudor Theory, ff. 29 ff. 37, 59

<sup>484</sup> Cf. our remarks on Hooker in section 4c of this chapter.

<sup>485</sup> Insofern was the catholic-ultramontane reaction against the new regulation justified. About them, as well as about their negative concurrences with the Puritan position s. George, Protestant Mind, 181-210, and Salmon, Rel. Wars, 30ff. For good comments on the whole complex, see Powicke, Reformation, esp. 50, 55f., 115, 119.

<sup>486</sup> Baumer, Tudor Theory, 157, 159. On the practice, already developed in the 15th century, of passing off new law as an interpretation of old law, despite the distinction between statutes introductory of new law and statutes declaratory of old law, see Chrimes, Const. Ideas, 249ff, cf. 283ff.



The doctrine of resistance is not a work of God, but an outflow of God's<sup>487</sup> reason and order. On the other hand, the general strengthening of royal sovereignty finds its (indirect) expression in the fact that the doctrine of resistance plays, on the whole, only a secondary role in the political debate; even Catholics, who, just like the monarchs on the continent, hurl the commonplaces of the legal conception of the *societas civilis* in the face of the antipapal monarchy, as a rule shrink<sup>488</sup> from the open call to disobedience and tyrannicide. Among the conservative friends of an antipapal monarchy, on the other hand, the rejection of the right of resistance while at the same time emphasizing the traditionally understood legal-moral bond of the monarch evokes a theoretical ambivalence - <sup>489</sup>this is a hermaphroditic position, albeit one; that is tactically expedient, since the traditional conception of law went hand in hand with the right of wide resistance, just as the rejection of the latter went hand in hand with the modern idea of sovereignty. This ambivalence, however, results with inner necessity from the double-sided fact that the secular part of the *societas civilis* supported a sovereign act against the ecclesiastical-catholic part of this same *societas*, while at the same time it did not want to grant the *voile* sovereignty to the author of this act.

The open execution of a sovereign, even revolutionary act, in spite of all casuistry about the alleged interpretation of old law, etc., would give food for the conviction or at least the suspicion that law and statute are being violated in

W. rality made <sup>490</sup>. If approaches to such insights hardly continue to be The reason for this was that the cooperation of secular states, which expected a lot from the confiscation of ecclesiastical property and were therefore generally anticlerical, and the crown made a<sup>491</sup> dispute about the feasibility - and thus the maker - of the law temporarily irrelevant. The community of interests was given in advance: if the secular part of the *societas civilis* was allowed to enrich itself through the antipapal struggle and to expand its own sphere of influence, then for the monarchy, which was not sovereign (in the modern sense) and ideologically depended on the traditional conception of law, the revaluation of the civil participation in the parliament represented a willingness for the monarchy to be able to influence the law.

<sup>487</sup> See, e.g., St. German, *A Dialogue* =... Elton (ed.), *Tudor Const.*, 237. On Hooker's several borrowings from Thomas on this point, see Munz, *Place of Hooke r*, 51 ff., 175 ff., and Shirley, *Hooker*, ff.75

<sup>488</sup> Morris, *Pol.* The arguments of the opponents of the right of resistance are summarized by Baumer, *Tudor Theory*, esp. 103ff. To the extent that the right of resistance was used at all, it served, just as on the continent, both Catholics (such as the Jesuits Parsons, Morris, *Pol. Thought*, 135 f.) and their opponents (such as the Anglican bishop Poynt, Gooch, *Dem. Ideas*, f30.).

<sup>489</sup> On this ambivalence in Hooker, see Shirley, *Hooker*, esp. 97ff., 130.

<sup>490</sup> Moss, *Struggle*, 26.

<sup>491</sup> Lehmberg, *Reform. Parliament*, passim.

The parliamentary system has always been a means of sharing or concealing responsibility, of finding<sup>492</sup> accomplices or scapegoats for anything and everything. The legend that England had always been a parliamentary monarchy began to take<sup>493</sup> shape when the representatives of the Estates began to understand as their own right what the Crown had conceded for their own purposes. In order to understand the situation in the English 16th century, it is indispensable to remember that the concept of the parliament does not coincide with that of the civil representation, but equally encompasses the crown. The parliament as this inseparable unity of king and civil representation is what Smith has in mind when he writes that every Englishman is present in it, that its consensus is the consensus of everyone, and that it therefore constitutes "the whole universall and generall consent and authoritie" - <sup>494</sup>or, for instance, Aylmer, when he praises<sup>495</sup> the mixed constitution of England. Precisely this conception of Parliament shows that the supreme authority or sovereignty attributed to it with regard to all questions must not be understood in the modern sense, but in the sense of the *societas civilis*. For the general consensus reached in Parliament

- even with respect to acts that violated the *iustitia distributiva* - could give the impression, or at least make plausible the fiction, that the legal conception of the *societas civilis* continued to form the ideal basis of the polity. Thus it came to pass that, although the parliament of that time performed sovereign acts, this was nevertheless

no fundamental change of the given conception of its function

The "supreme" attribute continued to mean<sup>496</sup> a final appellate authority and not the modern sovereignty concentrated in the legislative sphere.

As already mentioned, the material - and apparently decisive - reason for the increase of royal sovereignty in the described framework on the part of the predominant secular part of the *societas civilis* was the (also) highly profitable confiscation of the property of the Catholic Church. The strengthened royal sovereignty served not least to ensure<sup>497</sup> the validity of the legal title of all purchases of church land.

<sup>492</sup> Baumer, *Tudor Theory*, 143f., 149.

<sup>493</sup> Allen, *Hist. of. Pol. Thought*, f262.

<sup>494</sup> *De rep. Anglorum*, II, u1. =4 S. 35,47.

<sup>495</sup> *An Harborowe* (...155\_9) = Elton (ed.), *Tudor Const.*, 16.

<sup>496</sup> Mellwain, *High Court*, 124ff., 129, 134, 136, 143ff. Elton, who against McIlwain points to the *de facto* legislative activity of parliament (*Tudor Const.*, 228 ff.), fails to see the mentioned discrepancy between practice and theory, as well as the *practical* causes of this discrepancy; thus the fact of the unbroken predominance of the traditional *view* in the 16th century remains unexplained. On the predecessors of the later developments in the 15th century, see Chrimes, *Const. Ideas*, esp. 70ff., f125., 141.

<sup>497</sup> Powicke, *Reformation*, f25.; cf. Judson, *Crisis*, 82f.

and vice versa: any claim to power by a Catholic king or a king suspicious of Catholicism was fought<sup>498</sup> not least out of fear of a possible threat to that power. We cannot here re-open the controversial question of who benefited most from the sale of the confiscated land, whether it further strengthened those already in power or virtually created the Gentry, which trend gained the upper hand in the short and which in the long term, etc., etc.<sup>499</sup> Either way, a huge shift of empire and influence took place, with the relative power position of the crown, which gained only temporary advantages and financial relief through the continuous partial sales, becoming weaker and weaker, while the *societas* as a whole and apart from its internal differentiation became correspondingly stronger, which was<sup>500</sup> reflected in purely quantitative terms in the very considerable increase in the standing representation in parliament during the second half of the 16th century. In this way, the Crown lost the material means to go to the end of the absolutist path, which had been taken by Thomas Cromwell's reforms in the field of administration and government<sup>501</sup>. Not without good reason, therefore, was the assumption made that the retention of the confiscated ecclesiastical land in the hands of the English crown might<sup>502</sup> have decided the English development in favor of absolutism. Systematic comparative research on the respective roles of the royal domains in the development of absolutism on the continent was undoubtedly very instructive.

The interaction - not of king and parliament, but - of king and the Estonian representation *in* parliament deprived English political thought under the Tudors and the first Stuarts of its productive polemical pinnacle and left little room for both the conceptual pragmatism of the new doctrine of sovereignty and the monarchomachic élan; this is also shown by the reception history of Bodin and Buchanan in England around 1600<sup>503</sup>. The sociopolitical

<sup>498</sup> This fear was alive not only under Mary (Dickens, *Reformation*, 264), but even under James II. As Bonald wrote, the Revolution of 1688 was the work not of the people but of the aristocracy, "qui craignit que la tendance des derniers Stuarts au catholicisme, ou même la profession ouverte qu'en faisait Jacques II, ne remit en question la légitimité de possession des biens de l'Eglise, dont les grandes familles s'étaient emparées", *Démonstr. philos.*, XIV = *Oeuvres*, VIII, 89f.

<sup>499</sup> Various positions on this can be found in Tawney, *Rise of the Gentry*; Habakkuk, *Monastic Property*; Dickens, *Reformation*, esp. 159ff.; Knowles, *Rel. Orders*, 393ff.

<sup>500</sup> Neale, *House of Commons*, 133f.

<sup>501</sup> They were impressively described by Elton, *Tudor Revol. passim*.

<sup>502</sup> Dickens, *Reformation*, 150; Knowles, *Rel. Orders*, 398; Trevelyan, *Social History*, f121

<sup>503</sup> On this point Salmon, *Rel. Wars*, 22; 18, 20, Moss, *Struggle*, ff28. Only during the Bürgerkrieg During the Second World War, the monarchomachic doctrines were spread in England, see Jaszi-Lewis, *Against the Tyrant*, ff.80

This constellation was reflected until about the time of the Civil War in the traditional view, in which the two relevant aspects of the time, namely the supremacy of law and the prerogatives of the king, were equally<sup>504</sup> valid. These aspects were taken into account in different ways by different socio-political subjects, or they were combined with each other, in order to take into account, from their own perspective, the paradoxical fundamental fact in the development of the sixteenth century, namely the simultaneous strengthening of both the position of the crown and that of civil representation. However, such a simultaneous strengthening of two heterogeneous powers could only take place in different respects: if the monarchy partly consolidated and partly expanded its prerogatives and thus brought the meanwhile expanded sphere of government under its undisputed control, the *societas*, on the other hand, gained the likewise expanded sphere of property. Now, according to the *societas*, the (accepted) strong royal prerogative had to stop at the sphere of property, indeed, it should be there in all its strength for the protection of this very sphere, while for the crown the encroachment on the rights of property had to be made in one way or another and from time to time, since its own income, precisely because of the expansion of the property sphere of the *societas*, did not grow to the extent that the strengthening of the government demanded<sup>505</sup> domestically and externally. But since the long cooperation of crown and *societas* against the Catholic enemy had blocked the entrance of the doctrine of sovereignty, meanwhile developed on the continent, into English political thinking, and consequently the new reality had been conceptually articulated by mere reformulations of the traditional conception of law, arguments continued to be based on the old terminology even after the outbreak of the conflict, and the matter was presented, or at least made to appear, from all sides as an opposition between royal prerogative and *justitia distributiva*; In the absence of a new overall theoretical conception to contrast with the old one, the ideological polemics of the parties emerged as a struggle for the true interpretation of the old one. The question of interpretation, however, became all the more acute and involved because there was now a discrepancy between the legal conception of the *societas civilis* and the English *societas* as it had been formed after the Reformation. This *societas* was no longer the traditional one, and therefore it became more and more difficult to grasp the events through interpretations of the traditional thought. Therefore, in the Bürgerkrieg, the old question had to be asked: "Who interprets the law?" had to be replaced by a new one: Who makes the law?"

The exclusion of the (modern) question of sovereignty due to the developments of the 16th century also characterizes the disputes between the two sides.

<sup>504</sup> See section b3 of this chapter.

<sup>505</sup> S. Judson, *Crisis*, chs. I-III; Gough, *Fundam. Law*, 68; Ritter, *Parlament*, 56.

The exclusion is usually done with the help of the concept of fundamental or common law, which gradually emerges, is projected into the past, and thus acquires, as it were, a revenge-working power. It confirms anew that the law is not made, but has existed since time immemorial and has slowly evolved through changes in custom and popular sentiment, and that, against this legal background, the royal prerogative, which in itself constitutes a self-evident part of the fundamental law, is to be subsumed under it for that very reason, and that it is the law of the people which is the basis of the fundamental law.

therefore not to be understood<sup>506</sup> as sovereignty in the fashionable sense. It should be noted,

that from the point of view of a common law theorist like Coke, the rejection of royal sovereignty is by no means the flip side of a (covert) plea for the sovereignty of state representation, but is based on a fundamental rejection of modern sovereignty in general and as such - to be more precise: modern sovereignty is not rejected, but does not appear on Coke's theoretical horizon at all. For Coke

the standische representation their rights and privileges<sup>507</sup> and fights for them, just as the king has his prerogatives, for which he must also fight from time to time; but these struggles of both sides against each other are to take place within a clearly defined framework, for both are equally under the law, i.e., the fundamental or common law; sovereign claims

of the parliamentary representation were therefore just as inadmissible as those of the king<sup>508</sup>. Parliament" here does not stand for the representative body of the Estates, but, as

in Smith, for "lords, commons and king" in their firm unity of will and function<sup>509</sup>.

Thus, it can be claimed that "power and jurisdiction" of the parliament were "transcendent and absolute"<sup>510</sup>, without this being in contradiction to the sub of the parliament under the common law: because the first statement does not mean the legislative sovereignty of the Parliament, the second does not mean its denial<sup>511</sup>.

The extent to which the Crown was also caught up in this way of thinking is demonstrated by the way in which James I and Charles I made their claims in the situation at the time.

<sup>506</sup> S. Pockock, *Anc. Constit.*, 32-34; Gough, *Fundam. Law*, 59, 64.

<sup>507</sup> The systematic use of the plural by Coke (see, e.g., IV Inst., cap. 1 = p. 49) is related to the absence of the constitutional term in the modern sense. About this Absence and the difference between the modern concept of constitution and fundamental laws s. Wormuth, *Prerogative*, 47, 33f.

<sup>508</sup> Gough, *Fundam. Law*, 48f., 64; Moss, *Struggle*, 139ff.; Gough, *Pol. Thought*, 64; cf. Allen, *Engl. Pol. Thought*, 36f.

<sup>509</sup> IV Inst., c. 1 = p. 24.

IV510 Inst., c. =1 p. 36.

<sup>511</sup> So McIlwain, *High Court*, 147f.

underpinned<sup>512</sup>. It was not until the middle of the 17th century, and in the light of the bitter experiences of the War of Burgundy, that English absolutists attempted to aid the cause of the king through the weapons of the modern idea of sovereignty, but they remained, significantly, a small and rather unnoticed minority. Most royalists do not develop a theory, but support the Crown's prerogatives on the basis of fundamental law; they do not argue that the King is sovereign and that there is no law or fundamental law independent of his will, but, on the contrary, they assume that the royal prerogatives are part of the existing law and cannot be restricted by the *societas* represented in Parliament; and they do not argue that the King is sovereign, but rather that the King is sovereign and that there is no law or fundamental law independent of his will.

support the right of the king to disregard the law if necessary,

but not his right to create<sup>513</sup> law according to his own judgment. This latter view was based on the distinction between "absolute" and "ordinary" rights.

Royal power. In the new situation, of course, the absolute power was the one that caused the most headaches; the apologists of the king did not really know whether they should place it above the law or somehow integrate it into the legal order. They could not decide whether the prerogative brought the royal power close to the sovereignty, as Forsett, for example, thought, or whether it in no way touched the essence and function of the traditional constitution: in the latter case, however, it would not be an indivisible and original constitution.

The general competence, but only the respective claim of one among many concatenated special royal private rights.<sup>514</sup>

The parliamentary counterpart, however, did not initially have a unified conception of sovereignty, but tried to cope ideologically with the new situation by reinterpreting the old theory. This was due more to the largely unproblematic anchoring of the latter in all strata of society as a result of the balance of interests created in the 16th century than to the fact that it was not a matter of the old theory.

The fact, which is otherwise rightly emphasized<sup>515</sup>, that a - if not quantitatively

The most important part of the insurgents, although in terms of their fighting strength, generally adhered to conservative views due to their affiliation with the peerage. For even Pym, who was at home in the world of trade<sup>516</sup>

<sup>512</sup> See the speech delivered by James I in Parliament on 21.3.1610 = Kenyon (ed.), *Stuart Const.*; 12-14, u. vgl. die Analysen von Allen, *Engl. Pol. Thought*, 4 ff., Moss, *Struggle*, 57ff., Ritter, *Parliament*, 20 f. Charles I, in turn, entrenched himself behind the traditional theory of the mixed constitution, see his Answer to the Nineteen Propositions (18. 1642)6. = Kenyon (ed.), *Stuart Const.*, This 21.same theory, however, could also be the opposite side with the necessary shifts in accent, see Weston, *Mixed Monarchy*, passim.

<sup>513</sup> Allen, *Engl. Pol. Thought*, 482f.; Pocock, *Ancient Const.*, 54f.; Zagorin, *History*, 190 ff.

<sup>514</sup> Judson, *Crisis*, 112ff; Wormuth, *Prerogative*, 54f., 59, 70f.

<sup>515</sup> Zagorin, *Court*, 90f.

<sup>516</sup> On this point Hexter, *Reign of King Pym*, ff.77



The Declaration of the Lords and Commons of June 6, 1642, did not speak of a legislative sovereignty of the two houses, but only repeated the old principle that the will of the king, which is binding in itself, may only be exercised in and by the king.<sup>517</sup>

the parliament be ver<sup>51</sup>kiindet-<sup>8</sup>

However, the commonplaces received insofar as

The first two of them took on a previously unknown meaning and impetus when they were directed against a very specific goal, namely the royal power. Previously, they referred to the Parliament consisting of Lords, Commons, and King, and as such indivisible; but at the moment when both Houses of Parliament and King fall apart, the concept of Parliament identifies itself, at least indirectly, with that of the two Houses, so that the powers which belonged to Parliament in the old sense are now granted to the two Houses, i.e. to the new Parliament opposed to the King. According to this dramatic, though not explicitly stated, transformation of the concept of parliament, the appeal of the two houses to old principles has the meaning that the king has to submit to the representative body, i.e. to interpret and use its prerogatives according to its judgment. However, an appropriation of royal prerogatives on the part of the stancle was tantamount to<sup>519</sup> a break with fundamental or common law. And to the extent that this break was made, the claim that one was acting in the spirit of the law could ultimately only mean that one's own actions and the law coincided or that the<sup>520</sup> law was a product of one's own actions.

The de facto deviation of the two houses of parliament from the old law is the deeper reason why not only the invocation of traditional ideas takes on a new meaning under the new circumstances, but also why these ideas themselves are mixed with novel or modern elements in different doses and at different levels of consciousness. The concept of fundamental law, which has proved flexible enough to accommodate the concerns of all parties and even the radical natural law ideas of the Levellers, now incorporates ideas such as *salus populi* and popular sovereignty.

<sup>517</sup> The texts (from 164025.11. and 1641)13.4. can be found in Kenyon (ed.), *Stuart Const.*, 207, 214f.

<sup>518</sup> Kenyon (ed.), *Stuart Const.*, f248

<sup>519</sup> Wormuth, *Prerogatives*, cf. 60, 29.

<sup>520</sup> In Allen's irreplaceable formulation: It was impossible to maintain that they were claiming *only* such powers as law gave them, except by saying that the law actually was whatever they chose to say it was. Yet they had proceeded to disclaim any power to make new law. They seemed to be saying that whatever they thought ought to be law must actually be law, and that, therefore, in declaring it to be so, they were not making new law, even though nobody had ever heard before of the rule laid down" (*Engl. Pol. Thought*, 395).

<sup>1</sup>This means that at least the most radical opponents of the Crown go beyond the traditional argumentative framework to use arguments that are political (in the new sense) rather than juridical (in the old sense); in the not infrequent cases in which the common law proved the royalist positions right, they did not concede defeat on<sup>52</sup> the juridical level, but they shifted the whole level of the debate, and the whole of the debate to the juridical level.

appeared in the name of new instances, as representatives or even as *Verkorper*

The new concept of parliament is formed and consolidated precisely by<sup>522</sup> this far-reaching identification of parliament and people, which goes hand in hand with a legitimization of the former by the latter. On the detour of a primal interpretation of Smith's conviction concerning the old parliament, according to which every subject was present in it, it is now asserted that the people are not above or below the parliament, but that they are the parliament itself, whose decisions could therefore not be subject to any control<sup>523</sup>. If, however, the parliament is torn loose from the framework of fundamental or common law by the expulsion of the king, then law is no longer the victim and the precondition of the parliament, but rather its creation. In this line of thought, the new concept of law merges with the new concept of parliament. Thus, the parliament ceases to be a high court and becomes primarily a legislative body; *jus dicere* is replaced by *jus dare*<sup>524</sup> against the background of the new concept of parliament. This had two other important consequences, which must be mentioned briefly. First, the legislative sovereignty of parliament had to entail a strengthening of state power. For in the *societas civilis* the conception of the divine origin of law corresponded to the lack of concrete coercive means for its enforcement, i.e. to the atrophy of statehood; if, on the contrary, the creator of law is visible and localizable, the task of making the law he himself has created binding becomes much more acute for him, if he wants to confirm himself factually in his function as sovereign legislator. Theorists of parliamentary sovereignty such as Parker concluded from the observation of the practical impotence of the (old) law that it was necessary to endow the legislative parliament with sovereign power as the only means of enforcing the (new) law. Parker also expresses the second logical consequence of the legislative sovereignty of parliament,

<sup>521</sup> Mcilwain, *High Court*, ff; 75 Gough, *Fundam. Law*, 80ff., f115

<sup>522</sup> Judson, *Crisis*, 248274et seq.

<sup>523</sup> Wormuth, *Prerogative*, esp. 68; cf. Parker's argument as presented by Allen, *Engl. Pol. Thought*, 426 ff. The idea that the people stand above the law, while the king stands below it, was also expressed unapologetically, see good evidence in Kliger, *Goths*, 261.

<sup>524</sup> Mcilwain, *High Court*, 94.

Namely, the view that law is a secular entity that has to do *with* human needs and purposes.<sup>525</sup>

In order to understand the English situation in the 18th century, and especially the important fact for us that the then sovereign oligarchy by no means resorted to the theories of parliamentary sovereignty developed around 1650 for its own legitimation, it should be mentioned here that these theories were developed not least by radical democratic minorities, who associated with<sup>526</sup> them the demand for the participation of broad strata of the population in the election of representatives, for numerically proportional representation of the population in parliament, etc. In both respects, however, the memories of the oligarchy around and after 1700 were fresh. As sovereignty in general smelled of absolutism, so parliamentary sovereignty in particular smelled of democracy, but in both respects the memories of the oligarchy around and after 1700 were fresh and embarrassing. Thus, although much more modern political theories, such as Locke's, were designed at the time of the streamlining of its ranks and its resolute domestic and external political action, to which it could have resorted, it nevertheless remained with an essentially ambiguous but flexible and manipulable construction, where the commonplaces of the legal conception of the *societas civilis* at least dominated the façade. And yet, especially after 1688, phenomena became noticeable on several levels at the same time, which can be interpreted as signs of the exercise of modern sovereignty on the part of an oligarchy with remarkable talent in building a state apparatus. In the economic sphere, there was a large-scale redistribution and concentration of land ownership in favor of the long-standing rich at the expense not only of the peasants<sup>527</sup>, but also of several middle- and lower-class gentlemen. In the political sphere, the mass of the gentry, which after the victory of 1688 had wanted to increase its local and parliamentary power *with a* strong self-confidence, was again pushed back, but in doing so, as a result of its unrelenting factional struggles, it made the political game chaotic and threatened to paralyze the functioning of the state; political events were henceforth increasingly dominated by an influential minority, which put an end to anarchy by imposing<sup>528</sup> its rules of the game on the *societas*. Finally, at the level of government, the executive and administrative powers were strengthened, both for the ever-expanding external political activities, linked to trade and colonial expansion, and for the management of the related political and economic problems.

<sup>525</sup> On these two points, cf. Judson, *Crisis*, 158, 357, 409 et seq., 422.

<sup>526</sup> See, e.g., *The First Agreement of People* by =28.10.1647 Kenyon (ed.), *Stuart Const.*, 309.

<sup>527</sup> Habakkuk, *Landownership*, esp. 52.; *Disparition*, esp. ff.657. He is followed by Mingay, *Landed Society*, et seq.50

<sup>528</sup> Plumb, *Growth*, 20ff., 62ff., 96; on the variations in electability see. Meyer, *Wahlrecht*, ff.30

related fiscal tasks. Already at the beginning of the 18th century, England had the most efficient state apparatus in all of Europe; the development of the cabinet system can be traced<sup>529</sup> back to this strengthening of the executive rather than to the weak personality of the monarchs. This is not a free retrospective reconstruction of the situation at that time on the basis of the terminology we are familiar with, but a process that contemporaries were well aware of. As Blackstone wrote, under the pressure of the new duties of state, "such a weight of power arose into the executive scale of government, as we cannot think it was intended by our patriot ancestors; who gloriously struggled for the abolition of the then formidable parts of the prerogative, and by an unaccountable want of foresight established this system in their stead."<sup>530</sup> The complaint against the lack of foresight of the forefathers is tantamount to a statement of the truly decisive fact that the oligarchy, *volens volens*, had to assume those functions and take those measures that absolutism demanded of it if it wanted to be equal to the tasks that the now direct responsibility for the governance of the state imposed on it. The burdens that seemed unacceptable as long as the monarch wanted to impose them on the *societas* for what seemed to be his own purposes were more or less willingly borne now that his own rule was at stake. The oligarchy thus proved capable of disputing<sup>531</sup> itself - and the country among itself - so that an absolute monarchy could be established; it also showed itself capable and far-sighted enough to carry on politics and trade simultaneously and on an international scale. If she had not been able to initiate the rise of England in the 18th century precisely by consolidating her own position at the head of the nation, the defeat of absolutism had been fatal for the English future.

The strong executive was in the service of the oligarchy, and the legislature, which was also flesh of the oligarchy's flesh, was also in its service, and which created the basic conditions for the development of the oligarchy's activity in all areas, especially in the economic sphere, through the tireless passing of laws<sup>532</sup>. Connoisseurs of the English scene of the 18th century such as Burke, however, remained unaware of this previously unknown and also unthinkable

<sup>529</sup> Plumb, *Growth*, 13, 99 et seq.

<sup>530</sup> *Commentaries*, I, =8 I, 337.

<sup>531</sup> An act of far-sighted self-disciplining was, for example, the land tax, which, as we recall, was paid by the landowner and not by the tenant. The details of interest to us can be found in Ward, *Land Tax*, esp. 17 ff, 66 ff; cf. Habakkuk, *Landownership*, 9. The steady growth of wealth, of course, made it considerably easier to bear the tax burden, as Coleridge retrospectively noted against Pain, see *On Taxes and Taxation*, *The Friend* = CW, IV, 237.

<sup>532</sup> Important examples of this activity of the legislature from the period immediately after 1688.

In Ogg, *England*, £...120,282,283,305, etc.; 308 cf. Trevelyan, *Social History*, 206, 209, 224, 235.



The fact remains that the executive and legislative branches of government were not hidden from each other, and they also knew that "it is absolutely necessary to have frequent recourse to the legislature<sup>533</sup>—regardless of how the executive and legislature related to each other according to the respective balance of power between the various competing groups of the oligarchy and which of the two retained the upper hand, the fact remains of the tremendous intensification of the activity of both, which infallibly indicates that here modern sovereign statehood was in inexorable ascendancy. It becomes all the more interesting, therefore, to explain the paradox that there was little talk of sovereignty and statehood. The unpleasant memories of absolutism and democracy that discouraged it have already been mentioned. In addition, however, the English socio-political reality of the 18th century itself had reasons that served as solid supports for the fiction of a seamless continuity of the *societas civilis* and its conception of law. First of all, it is necessary to point out the fundamental fact that the executive and legislative branches were not entirely under the control of the oligarchy, but also consisted entirely of its members. Corruption, which had been exotic in 18th-century England, was also a problem. Corruption is not to be understood in today's sense, namely as an illegitimate influence on the bearers of the state apparatus by outside members of society, but rather as a procedure by which the members of the oligarchy shared among themselves what belonged to them (as a collective) and not to a state apparatus outside of them; corruption thus illuminated, from a piquant point of view, the crucial identity of oligarchy and state, merely confirming that the self-government of the oligarchy and the administration of the state largely coincided. Of course, corruption was not the most important aspect of oligarchic self-government that had direct state relevance; much more important, for example, was the collection of land taxes by the local oligarchs themselves, rather than by royal officials, or the police and judicial functions of the landowners. In this way, the state did not appear as an apparatus rigidly and cohesively opposed to society, but only as the most humble and honorable part of society itself, which could be conceived or presented as a *societas civilis* to the extent that its closest interconnection with the state gave the impression that one was still living in the blissful pre-state state. The collective character of the oligarchy's rule gave it the opportunity to pass itself off as the people who formed the physical subject and object of the common law. The enormous difference, however, which was not recognized or admitted, was that the people of the common law could never have imagined such powers and competences, let alone make them their own.

Blackstone states in no uncertain terms that "our gentlemen of independent estates

<sup>533</sup> Burke, *Thoughts on the causes etc.*, Works, I, 494.

and fortunes", who at the same time acted as jurors and peace justices, or were<sup>534</sup> sitting in parliament, were "the makers, repealers and interpreters of the English laws". The way he speaks of their landed property, which he considers the main subject of jurisprudence, gives a good insight into the social disposition of the gentlemen in question. First of all, there is no feudal swarming about the eternal attachment to the ancestral land, etc.; the commercial traffic" in the countryside appears to be entirely a matter of convenience, not principle, testamentary dispositions are not tied to family traditions, and it is also noted that the feudal system is a thing of the past and that modern land ownership bears no relation to any family tradition. military plan" anymore.<sup>535</sup> In fact, the de-feudalization of the The decline of land ownership accelerated during the 17th century, and feudal taxes accounted<sup>536</sup> for an ever smaller share of landowners' income. This had two important consequences for the attitude of the oligarchy: first, social status became conditioned by landownership rather than by birth, or landownership proved high birth<sup>537</sup>; and second, the patriarchal attitude almost completely disappeared, making<sup>538</sup> the English nobility at least partially receptive to the ideology of *laissez-faire*. Thus, an unsentimental, utilitarian, and hard-headed realist approach to social affairs emerged, centered on a concern for property.<sup>539</sup> On the other hand, in view of later confrontations with internal and external radical or revolutionary enemies, it is necessary to point out certain conservative leitmotifs that nevertheless remained alive in the broad spectrum of eighteenth-century English landed society. However, these did not form aspects or components of a coherent theory like Fenelon's or Coquille's, for example, but appeared in unsystematic form in the struggle between the landed interest and the moneyed interest. The country ideology, if it may be called so, revolved around complaints about the constant growth of the national debt, from which the moneyed men profited; accordingly, they were blamed for the expansion of the state apparatus and the army as well as for the warfare, and their greed and corruption were countered<sup>540</sup> by the natural virtues of the gentleman living in the country. Bolingbroke, who vividly summarized the central topoi of this country ideology, expected from his ideal patriot king, among other things, a reduction in taxes.

<sup>534</sup> Commentaries, Introd. , § = I I, 7-9.

<sup>535</sup> Commentaries, II, u1. = 4 II, f9.13, , 58.

<sup>536</sup> Ogg, England, 55f. , f69.

<sup>537</sup> K. Luxen, Engl. nobility, f11.

<sup>538</sup> Blake, Cons. Party, 14.

<sup>539</sup> Mingay, Landed Society, 116.

<sup>540</sup> Dickinson, Liberty, 104ff, 170ff; Holmes, British Politics, ff.148

and an end to the policy of national indebtedness<sup>541</sup>; in calling for "frugality," he emphasized at the same time that the continuation of the present policy would mean a further burden on the landed men bearing the land tax<sup>542</sup>. Since, as I said, such complaints and proposals were not infrequently accompanied by general moral reflections on the corrupting effect of money and trade, there was also no lack of voices praising<sup>543</sup> the good old feudal-patriarchal times. However, this was said somewhat casually; it was never elevated to a program. The reason for this was given by the same Bolingbroke who had so much to criticize about moneyed interest and corruption: By trade and commerce we grow a rich and powerful nation, and by their decay we are growing poor and impotent<sup>544</sup>. To improve the situation, therefore, he proposed not a unilateral preference for the landed interest but its cooperation with the moneyed interest, although he continued to insist in principle that "the<sup>545</sup> landed men are the true owners of our political vessel; the moneyed men, as such, are no more than passengers in it. In fact, the direct or indirect participation of the rancorous landowners in capitalist enterprises had reached<sup>546</sup> the point where the most sincere and consistent representatives of the country ideology were among the relatively weak provincial gentlemen, who, however, could not set the overall national tone. The attitude of the rich aristocratic upper class, on the other hand, is characterized more by a duality that found<sup>547</sup> its practical expression in the structure of the joint-stock company. It was much easier for this upper class to profess the country ideology when it! It was easier for this upper class to profess the country ideology when it wanted to exclude the moneyed interest from the political leadership of the country, despite all the profitable economic cooperation, and it largely succeeded in doing so for a long time.

The fiction of the survival of the *societas civilis* and its conception of law also largely formed the façade of the theory of the English constitution of the 18. However, a detailed analysis of the motivation, the logic, and the contradictions of the constitutional fiction suggests that it concealed a constitutional reality that was very different from it, and that was characterized by the dissolution of the

<sup>541</sup> Patriot King, Works, III, (105

<sup>542</sup> Reflections on the State of the Nation, Works, III, esp. 169,173.

<sup>543</sup> Thus, Johnson noted that commerce was breaking down the strong family ties, and Boswell then thought nostalgically of the old feudal system: "there was a reciprocal satisfaction between the Lord and them [the vassals]; he being kind in his authority over them; they being respectful and faithful to him" (Life of Johnson, 482, entry of 9. 4. 1772).

<sup>544</sup> Patriot King, Works, III, 102.

<sup>545</sup> Reflections on the State of the Nation, Works, III171., 175,174.

<sup>546</sup> Mingay, Landed Society, ff189

<sup>547</sup> Trevelyan, Social History, 409.

*societas civilis*, namely by the (de facto) implementation of the new concept of parliament, which had already been formulated during the Civil War. As indicated above, the fiction of the survival of the *societas civilis* was initially motivated by the fact that the upper classes gained their rule in the struggle against absolutism and its claims to sovereignty, which they had to counter with the traditional conception of law and the Whig interpretation of history - this "political propaganda in historical dress"<sup>548</sup> - for polemical reasons. The use of terms such as "political," "polity," "commonwealth," or "respublica" in eighteenth-century England seemed to<sup>549</sup> justify, at least in part, the maintenance of the above fiction, but in fact it was itself a component of it. More significant with regard to the real situation is the fact that central topoi of the fundamentally accepted common-law ideology either fade away, such as the immemorial custom<sup>550</sup>, or are reinterpreted, so that, for example, the fundamental law is now interpreted in terms of contract theory or natural law (in the modern sense).<sup>551</sup> In these, it must be determined in the first place whether "Parliament" means the unity of King, Lords and Commons, or the two Houses, or even only the House of Commons<sup>552</sup>; in cases where that unity is meant, it must be ascertained what powers are vested in each of its three members, and whether the powers of one could in practice paralyze those of the other. Such a concrete examination is necessary because the polemically necessary fiction of the English constitution of the 18th century prevented the formulation of a theory which would express the actual power relations unambiguously. Moreover, the ruling oligarchy did not feel compelled to formulate such a theory defensively, since no one seriously threatened its position during the eighteenth century.<sup>18</sup> The absolutely necessary hints about who was in charge of the state were made, but in the absence of a direct threat to the rule of the oligarchy, they did not coalesce into a coherent theory that destroyed the constitutional fiction, which was very useful from a socio-political point of view.

In Blackstone's work, traditional thought, the use of which is, as it were, the prelude to the presentation of the constitutional fiction, first appears in the form of the conviction that human law is derived from divine and natural law.

<sup>548</sup> Skinner, History, esp. 176-178.

<sup>549</sup> Stourzh, Staatsformenlehre, esp. 296-301.

<sup>550</sup> Pocock, Ancient Const., ff.229

<sup>551</sup> Gough, Fundam. Law, ff160

<sup>552</sup> See, for example, Burke, Works, I, 491; II, 544; cf. phrases such as "crown and Parliament" (II, 550).

to derive<sup>553</sup> it. Subsequently, however, he identifies sovereignty and legislation and writes that it belongs "to the very essence of a law that it be made by a supreme power"<sup>554</sup>. This does not contradict formally logically the thesis of the divine If in the traditional conception of law the divinity of law could be recognized primarily by the fact that it could neither be created nor fundamentally changed by man, now the reconciliation of divine and human law means that men who create or change law must take into account the divine commandments. How noncommittal this was in practical terms, and how much the affirmation of sovereign legislative right had changed the character of the relation between divine and human right, is unmistakably shown by the fact that Blackstone concedes to the sovereign legislature <las rec h t to transpose precisely <las what the traditional conception of law had just <lled to transpose by the assumption of of the divinity of the right wanted to receive intake. Thus <las sovereign parliament can determine the rules of succession to the throne, the religion and also the constitution of the country or create<sup>555</sup> it anew. Blackstone now wants to change the fiction of the Blackstone maintains continuity with tradition, and thus constitutional fiction, by quoting Coke's statements on the sovereignty of Parliament, without realizing, however, that for Coke <las Parliament was first and foremost a High Court and not a legislative body in the modern sense,> and that *therefore* not only did the concept of sovereignty mean something different, but also the relations between the three components of Parliament were understood in a substantially different way. The extent to which Blackstone's attitude differed from Coke's can be seen, by the way, in the distance between the three parts of parliament. Blackstone speaks of the firm habit of the old-school jurists, new law as the "correct" interpretation of the old one<sup>556</sup>. He knows that there is a voluntaristic intervention behind it, and therefore he is not ready to agree with the view of a linear organic development of law without dramatic ruptures of the whole legal system<sup>557</sup>. Also Blackstone's subjection of the common law to <las Statute as well as <lessen Loslösung vom traditionellen Prinzip der equity weisen in dieselbe Richtungss\_

The concrete political meaning of these general deviations from the traditional legal conception, while fundamentally invoking it, is illustrated by Blackstone's equally ambiguous treatment of the question of the relations of the

<sup>553</sup> Commentaries, Introduction, § =2 I, ff.38

<sup>554</sup> A. a. O., p. 46, cf. 49: "by the sovereign power ..... is meant the making of laws.

<sup>555</sup> Commentaries, I, =2 I, 160f.

<sup>556</sup> Commentaries, Introduction, § =3 I, 70.

<sup>557</sup> A. a. S0., (64cf. § =1 I, 10).

<sup>558</sup> S. a. a. O., u89., Allen, Law, 427£.433,

Crown to the two houses of parliament. The constitutional fiction is again <hole> underpinned by the attachment to traditional topoi, while the constitutional reality <hole> shines through the - practically decisive - reinterpretations or constraints of these topoi. Although Blackstone ascribes legislative sovereignty to Parliament in the modern sense, he <hole, on the other hand,> sticks to the traditional façade, and thus to the constitutional fiction, by striking it as the unity of King, Lords, and Commons: "sovereignty is

lodged in these three powers together"<sup>559</sup>. But since at the same time it is claimed, these three powers were "distinct" and "independent" from each other, the question arises as to the relative weight of each of them within the said entity. Significantly, Blackstone does not dwell for a moment on the possibility of annulling the decisions of the two houses of parliament by a royal veto (which, incidentally, was used for the last time in 1707), while conversely he dwells on the "limitation of the king's prerogative by bounds so certain and notorious, that it is impossible he should ever exceed".

them" is a fundamental pillar of the English constitution<sup>560</sup>. In the solemn recognition In the recognition of royal participation in sovereign legislative work, therefore, there is the assumption that the will of the Crown, by definition, cannot fail to coincide with that of the two Houses of Parliament - even if this assumption leads to the absurd assertion that the King, of course, would not object if, for example, the Lords and Commons were to decide the succession to the throne.

to the disadvantage of his own direct descendants.<sup>561</sup> The case of a conflict between the king and the two houses (a case which, on the basis of old and recent experience, should actually be at the center of English constitutional theory) is thus not taken into account at all, because the royal contradiction is excluded from the outset. Blackstone takes up

He refers back to the Germanic-medieval tradition and quotes Tacitus and Bracton to support the thesis that the king cannot be absolute (i.e., he cannot be a king):

against the will of the two houses of the parliament)<sup>562</sup>, thereby escapes him

But the paradox of his own argumentation: for he declares the king to be an indispensable component of a parliament endowed with sovereignty in the modern sense, while on the other hand he wants to bind him to principles that applied before the appearance of such a concept of sovereignty. In practice, however, this amounts to the very concrete demand that in a state governed according to the principle of modern sovereignty, the king should be as sovereign as he was before the emergence of the modern principle of sovereignty.

<sup>559</sup> Commentaries, Introd, § =2 I, 50 f. On the radical change in the concept of "mixed government" inherent in this formula in comparison with the situation before 1688, see. Weston, Engl. Const. Theory, ff.87

<sup>560</sup> A. a. IO., =7 I, Cf237.. Burke, Motion relative etc.. (1784) = Works, II, 552.

<sup>561</sup> A. a. IO., =3 I, 195£

<sup>562</sup> A. a. O., I, =6 I, 233£

again, suppressing the fact that at that time the lack of royal sovereignty was accompanied by a more or less strong royal prerogative in certain areas. Blackstone, however, is clear about the former strength of these prerogatives, since he describes the considerable supervision of the

He notes the decline of the "powers of the crown" since James I. At the same time, however, and again with a view to maintaining the constitutional fiction, he claims that the contemporary expansion of the executive would give<sup>563</sup> the crown new power and new scope for action.

The analysis of this double assertion can provide us with the key to understanding the central paradox that pervades the dominant English constitutional doctrine of the 18th century to the extent that it feels compelled to defend the constitutional reality only while preserving the constitutional fiction. The king (at least as a person) should have no independent sovereign power, but the crown (as an institution) may and must actively participate in the sovereign control of the state. Two questions arise here. What compels the nominal defense of royal rights precisely after the final defeat of all royal claims to sovereignty? And how can the fiction of the continued existence of essential rights of the crown be maintained after the de facto abolition of the king's prerogatives? The first question has already been answered in a general way, when we mentioned the unpleasant memories of the oligarchy of the theories of pure parliamentary or popular sovereignty put forward during the Civil War and the radical practice connected with them. In response, a Filmer-influenced monarchical-patriarchal tendency came to dominate Restoration-era political theory, shaping Tory ideology in the process. The specter of democratic egalitarianism, which after the experience of the Civil War appeared as a quasi-necessary consequence of abolishing the monarchy, continued to haunt the country after 1688, contributing negatively but decisively to the oligarchy's adherence to the monarchical form of government; although the policies of James II. s policies stole the monarchist momentum of the Restoration period, essential elements of Tory ideology were carried over into the new Ara and (tacitly) incorporated, in a (very) modified form, into the political doctrine that now prevailed. The Tories, who remained politically in the game, took the new situation into account by abandoning stricter monarchism in favor of the formula of the "Tory".

King and the two Houses", which both took into account the new status of the legislature and rejected popular sovereignty and the right of resistance<sup>564</sup>. This shift therefore did not fail to have an effect, because they rinally with the inclination of the great majority of the Whigs toward upward1688

<sup>563</sup> A. a. 10., =8 I, 336f

<sup>564</sup> Dickinson, Liberty, 13ff, ff42

The Whigs found ways to abandon the radical aspects of their own doctrine. The great reluctance of most Whigs to accept Locke's political theory is characteristic of this. They often argue in their camp on the basis of the contract theory, but then the contract is understood in the sense of Hooker rather than Locke, i.e., it concerns primarily the pact. It concerns primarily the pactum subiectionis and not the pactum societatis, thus preventing claims to the formation of society ex nihilo on the basis of the principle of popular sovereignty; this concern is even more evident in the many cases in which the treaty theory is<sup>565</sup> set aside and the anti-absolutist claim is simply supported by invoking the ancient constitution. The aversion to "despotism" was stronger1688 among the Whigs than among the Tories, but after the elimination of the absolutist danger it was important not to let the pendulum swing too far to the opposite side. Thus, the conditions were in place for all sides to support the monarchy.

This monarchy was even allowed to be "strong" if it was only "good". In the In the language of the political power struggle, this meant in concrete terms that one was prepared to give the crown all possible powers (nominally) as long as one felt able to control the exercise of these powers (practically), i.e. to manage them according to the wishes of the ruling (group of) oligarchy. The surest way to do this was obviously to have the powers granted to the crown exercised not by the monarch himself, but by the ruling (group of) oligarchy in the name of the monarch, whereby the strong position granted to the crown ultimately amounted to a strengthening of the ruling (group of) oligarchy. Thanks to this socio-political constellation, the cabinet system emerged and developed in eighteenth-century England, and this arrangement made it possible - to answer the second of the questions posed above - for the fiction of a continuation or even a strengthening of the rights of the (largely depersonalized) crown to flourish precisely after the de facto abolition of the royal prerogatives in their concrete attachment to the concrete person of the monarch. The apologists of oligarchy, moreover, never doubted that royal rights endured only in their exercise by ministers. At the time of Burke's violence of Court despotism, "6<sup>56</sup> he recapitulated the constitutional reality since 1688 as follows: "Since the revolution the influence of... the crown had always been in supporting the ministers of the state and in carrying on the public business according to their opinions<sup>567</sup>. The threatening undertone betrayed,

<sup>56</sup> A. a. 0.,58ff,71 f( , ff79. Locke's theory of property was also received in this way, since8it was

the landed interest could stlitzen; the revolutionary aspect of Locke's reduction of property to labor was, on the contrary, suppressed, see Lark.in, Property, 107.

<sup>566</sup> Letter to the Duke of Portland from =16.8.1776 Corresp., III, 228.

<sup>567</sup> Thoughts on the cause of the present Discontents (1770) = Works, I, 460.



. that this is not an academic statement, but a polemical one.

It is a statement that is made in a certain situation of struggle. In order to grasp more concretely the operation of the cabinet system and, at the same time, the necessity of the fiction of royal rights, it is indeed necessary to visualize the tensions within the oligarchy, or rather the distinction, already indicated, between the socio/political ruling oligarchy as a whole and the relevant group within it. For the tactical purposes and the political-parliamentary maneuvers of the latter in their efforts to legitimize themselves and their actions vis-à-vis the other groups of the oligarchy, the invocation of the rights of the king or of acting in the name and in the interest of the crown could be highly useful. Thus, the fiction of royal rights was a true requirement of constitutional reality in the sense that it constituted a weapon of the ruling group of the oligarchy. With the help of this weapon, the cabinet, which was recruited from the aforementioned group, was able to put the representatives of the other side sitting in parliament out of action, referring to the nature of the constitution itself. According to the formulation of a good connoisseur of the English scene: "We know that for a century and a half it has been the custom of English ministers to refer to the privileges of the House against the Crown and to the prerogatives of the Crown against the House"<sup>568</sup>. All groups of the oligarchy, both the Tories and the Court Whigs, have, after all, taken the word of the royal prerogative when they expected advantages from its exercise in a concrete situation<sup>569</sup>, when they felt themselves to be in possession of the decisive influence in the state. If, on the contrary, they found that this influence belonged to the other side, they sang a lament about unfair favoritism and moral decay.

Bolingbroke's famous public campaign against corruption is to be understood in this Polish sense. When Bolingbroke calls for the elevation of the crown above all parties, when he deplores not only despotic tendencies (as in the case of France) but also the impotence of a king (as in the case of England), and when he wants to make<sup>570</sup> the appointment of ministers dependent not on corruption but on patriotism and ability, he means in concrete terms that his own "faction" should be able to take the helm with the help of a strengthening of the crown in relation to the group currently in power. The call of the Patriot King is a call for the Patriot King to take the helm. The call to the Patriot King to put an end to corruption means that he should deprive the opponent of the decisive positions in the state; it was precisely this opponent, this "one party," that had devoted itself entirely to the "project of enclosing themselves and of establishing their dominion under the government and the state.

<sup>568</sup> Marx, Ges. Sehr., II, 159.

<sup>569</sup> Examples in Dickinson, Liberty, 44f., 154f.

<sup>570</sup> Patriot King, Works, III, £54,56,75,79, f82

with the favor of a family who were foreigners" dedicated-<sup>571</sup>

Under the rule of this "party," the British system of government had "the..."<sup>572</sup> appearance of an oligarchy: and monarchy is rather hid behind it than shewn, rather weakened than strengthened. This was a highly accurate description of the social and constitutional situation, although Bolingbroke, from his oppositional point of view, thought he was merely reproducing the constitutional caricature caused by his opponents; because he was close to the party that had established the mechanism of "corruption" and

If the Crown did not control "influence" and therefore articulated its claims in moralizing language, it had to overlook the fact that "corruption" and "influence" had become the mode of operation of the ruling oligarchy in toto, and therefore a strengthening of the Crown could now be seen as an extension of its share in the game of "influence".

corruption" and "influence. It was therefore no coincidence that the abortive attempt by George III to free the crown to some extent from the grip of the then ruling group of the oligarchy, not least as an effort to gain<sup>573</sup> control over "patronage" and "influence"-Burke wrote a telling sentence at the time: "The power of the crown, almost dead and rotten as prerogative, has grown up anew, with much more strength, and far less odium, under the name of influence"<sup>574</sup>. But since he made himself the mouthpiece of the opposite partisanship as Bolingbroke, he in turn had to overlook or conceal the fact that neither the Prerogative was dead nor the Influence system entirely new: Prerogative and Influence had actually belonged together before - only they were not in the hands of the Crown, but of the then ruling group of the oligarchy.

As was the case with the prerogatives, so was the so-called separation of powers: measured in terms of its nominal value, it represented a fiction,<sup>575</sup> but on the other hand, the invocation of it or its respective handling served the concrete tactical-political needs of the competing groups of the oligarchy, and in this respect, too, the constitutional fiction formed a component of constitutional reality. The dispute between Walpole and Bolingbroke illustrates this fact. As the leader of the party that at that time controlled the executive, i.e., "influence" and "patronage," Walpole defended the clear distinction between the executive and the legislature, arguing that he wanted to preserve the authority and independence of the Crown (as the holder of the executive) vis-à-vis Parliament.

<sup>571</sup> On the Spirit of Patriotism, Works, III, 9.

<sup>572</sup> A. a. 0., 18.

<sup>573</sup> For details, see Davis, Influence, 32et seq.

<sup>574</sup> Thoughts on the cause . . . , Works III, 444.

<sup>575</sup> Keir, Constit. History, 295f Significantly, Blackstone millbilligt both the absolute identity and the absolute separation of legislative and executive , Commentaries, I, =2 I, This 154. practically made the separation of powers a matter of interpretation or a field for the execution of tactical manovm.



The fact that Bolingbroke's demand for the separation of the legislative and executive branches was a tactically astute countermove. But when Bolingbroke, in a tactically shrewd countermove, demanded the complete separation of the legislative and executive branches in order to make the former more autonomous and give it its sovereign rights, Walpole's party replied that this separation was not to be understood in an absolute sense and that recognition of the sovereignty of the legislative branch in its separation from the executive would <sup>576</sup>result in radical democracy. The plasticity, indeed the interchangeability, of arguments and counter-arguments is in itself a good indication that this is not a conflict of principles and thus a conflict between two fundamentally different parties, but rather the internal struggles of a socially dominant stratum that does not feel threatened from below and can therefore freely indulge in the pursuit of influential positions and enrichment, while in the process of this struggle for distribution it falls apart into different groups. This kind of falling apart and setting apart, however, implies fundamental sociopolitical and ideological homogeneity. Thus, it was not only constitutional lines of argumentation that were interchangeable or reversible, though they revolved around the tactically convenient ambiguities of the constitution rather than its social and political core, but around the party designations themselves.<sup>577</sup> The oligarchy's long aversion to the terms "party" and "opposition" probably <sup>578</sup>reflects the established fact that English political life of the time can<sup>579</sup> be described without any use of party designations: for corruption and influence were, as we must repeat without any moralizing undertone, the modes of oligarchic rule-  
580

In this situation, which is characterized on the one hand by the de facto exercise of modern sovereignty, and on the other by the

In the absence of an absolutist or democratic questioning of oligarchic rule, conservative ideology could consist either in the polemically conditioned fiction of the continued existence of the *societas civilis* or in occasional outcries against the moneyed interest. These ideological approaches, which had remained rather vague and superficial during the undisturbed rule of the oligarchy, gradually took on more pragmatic contours as the pressure of new, upwardly mobile strata became palpable, which initially demanded an expansion of the social system.

The government's aim was to reform the right to vote and the right to representation.

<sup>576</sup> Kramnick, Bolingbroke, 111, 123-146 et seq.

<sup>577</sup> On the changing use of language in relation to "Tory" and "Whig" in the century. 18.

s. Brewer, *Party Ideology*, esp. 46, 54.

<sup>578</sup> A.O. a., ff 55

<sup>579</sup> Namier, *Structure*, xi.

<sup>580</sup> For details on the intertwining of social and political influence, see Namier, a. a. ff 0., 16 u. passim, and Turberville, *House of Lords*, esp. ch. XVI-XVII.

arguments of the American insurrectionists<sup>581</sup>, but also systematically attempted<sup>582</sup> a radical interpretation of the principles of 1688. It was precisely in the light of this criticism that parliamentary sovereignty became visible as a mode of rule for the oligarchy to contrast with popular sovereignty, while the oligarchy had to <sup>583</sup> defend parliamentary sovereignty precisely in its opposition to popular sovereignty. This meant that the oligarchy recognized as sovereign only a parliament whose composition corresponded to its interests, and it opposed any substantial expansion of the social forces represented in parliament. Thus, it is only by gravely ignoring the crucial polemical aspect of the terms that it can be assumed that the defense of parliamentary sovereignty in the eighteenth century presaged the development envisioned by today's liberal adherents and perpetrators of the Whig interpretation of history. This becomes equally clear when we recall another point of debate at the time, namely the question of the imperative mandate. One indication of Burke's "liberal" sentiments has often been seen in his rejection of the imperative mandate, justified by the thesis that the representative represents the interests of the nation as a whole and therefore should not sacrifice<sup>584</sup> his impartial judgment to the private interests of his constituents. Elsewhere, however, the same Burke said that the fact that the parliament represents the nation anyway would make<sup>585</sup> a "popular origin" of the deputies completely superfluous. This statement brings to light the polemical ulterior motive of the rejection of the imperative mandate: Parliament, as the ruling body of the oligarchy, should not be exposed to pressure from below, its predeclared independence from the electorate should not be subject to radical or plebiscitary pressure, and its independence from the electorate should not be subject to the pressure of the electorate.

elements a limine - the only way to prevent this from In this sense, the happening.<sup>586</sup>

The rejection of the imperative mandate is related to the mechanisms of the oligarchy, and therefore it is not a groundbreaking theoretical novelty of Burke's, but it was already clearly expressed shortly after 1700 (namely at the time when the emerging oligarchy was seeking demarcation from the broader mass of gentlemen), and during the

<sup>581</sup> On this point, Brewer, *Party Ideology*, ff; 201 cf. Ward, *Land Tax*, 123.

<sup>582</sup> This explains Burke's polemic against the New Whigs (*Appeal ...*, Works, IV, 120 f.) as well as against those who wanted to regard their enthusiasm for the French Revolution as a natural consequence of their commitment to the glorious revolution (*Reflections ...*, Works, IV, 0 f.), Works, III, 236).

<sup>583</sup> Dickinson, *Liberty*, f204, f221, 228.

<sup>584</sup> *Speech to the Electors of Bristol* (3. 1774), 11. Works, II f95

<sup>585</sup> *Thoughts on the cause ...* Works, I, 492.

<sup>586</sup> Cobban, Burke, 60 f. Cf. Hilger, Burke, 138 ff 556, and above all Schumann, Burke, 83. Daß der damalige Whiggismus Burkes kein Liberalismus war, hat bereits Stahl betont, *Rechts phil.* 560.

18. J. H. S. often invoked<sup>587</sup> to be<sup>588</sup> repeated 1832 even by conservative opponents of the Reform Bill of .

The struggle against the New Whigs forced the English oligarchy to take its constitutional fictions seriously, i.e., no longer to use them arbitrarily merely as a means of settling internal disputes, which were not really about fundamental or life issues, but to use them systematically and consistently as a weapon against an enemy threatening from the outside<sup>1</sup>. Ultimately, Burke's critique of the French Revolution consists in such a polemical updating of English constitutional fictions, which cannot be conceived without the preceding confrontation with the New Whigs. The topoi of English origin to which the conservatives on the Continent resorted were primarily the thesis of the organic continuity of a *societas civilis* which was thereby evolving, and the conception of the rights of the crown; in this latter case, the English fiction had to be taken at face value, because it was possible to defend the monarchy against revolution in such a way that royalism did not have to mean a plea for absolutism. In the next chapter we will see how all this took place in concrete terms.

<sup>587</sup> Dickinson, *Liberty*, 101 f., 157f.; Kramnick, *Bolingbroke*, 173. Cf. Blackstone's criticism of Locke's theory of the dependence of the legislature on the people, *Commentaries*, I, =2 I, 161 (A rejection of the imperative mandate is already found in Coke, *IV Inst.*, cap. 1, S. 14.

<sup>588</sup> See, for example, Coleridge, *Table Talk* (12. 1833), 3.197f.

### III. COUNTER-REVOLUTIONARY CONSERVATISM AND THE REFORMULATION OF THE LEGAL CONCEPTION OF THE *SOCIETAS CIVILIS* ACCORDING TO 1789

#### 1. Outlook

A complete reconstruction of conservatism is 1789 possible only if it is interpreted as a reformulation and further development of the legal conception of the *societas civilis*, as it was formed in the anti-absolutist struggle since the 16th century. Since this reformulation and further development took place within an essentially new pan-European situation and in several different concrete situations at the same time, it had to take several forms. It is, however, factually wrong and, with regard to the understanding of the thinking of individual conservatives, unfruitful to make of these forms independent typical directions or even schools within conservatism<sup>1</sup>. For if one breaks down the above-mentioned forms into their basic elements of thought and then compares them with one another, it emerges that as a rule they are only different combinations of the same components, albeit each with a different accentuation, and - viewed as ideological entities - they are not the same.

- Their iridescent contours acquire clarity and pragmatism only against the background of the conservative principles with which we are concerned here, and their special character remains recognizable as such precisely against this general background. Therefore, the most important thing is the correct understanding of the structure and the intellectual-historical origin of these principles. Their simultaneous actualization in several concrete situations resulted in a rich palette of statements, often in opposition to each other; the opposition, however, concerns the manner of actualization, and as such it is more a reflection of the diversity of concrete situations and the respective tactical needs of militant conservatives than evidence of a school formation within conservative ideology.

<sup>1</sup> Thus Rowlands (*Das Wesen . . .*) wants to distinguish between a traditional (Rehberg), a romantic (Müller), a utilitarian (Gentz), and a conservatism of self-interest.

The continuity of the conservative structure of thought before and after 1789 is readily apparent if we use the first and decisive principles of the *societas civilis* conception of law as a guide: Law is not made, but *is*; justice is distributive and not commutative by its very nature; therefore, individual reason, which rebels against collective reason incarnated in law and associates or even identifies justice with the equality of all human beings before human law, lapses into hubris and atheism, thus splitting the unity of ethics. All this, in turn, leads to an outright rejection of modern statehood and sovereignty, thus establishing the crucial socio-political and socio-historical reference. The following analysis will show that conservatism after 1789 can be reconstructed on the basis of this guideline and that its additional ideological constructions on the level of anthropology or the philosophy of history, for example, represent mere mental extrapolations of old positions within a new situation. The essentially new feature of the situation after 1789 is that the arch-enemy, i.e. modern sovereignty and statehood, no longer appears primarily as absolutism, but as a liberal or democratic revolution. Although the deep-rooted aversion to absolutism lives on and even becomes stronger to the extent that a continuation of absolutism by other means is recognized in the revolution, the absolute primacy of the struggle against the revolution makes it recede into the background, which goes hand in hand with a new ideological and strategic evaluation of the monarchical institution. The monarch, however, is at the head of a meanwhile considerably expanded state apparatus, and an alliance with him against the revolution therefore means - intentionally or unintentionally, consciously or unconsciously - the use of the means made available by modern statehood precisely against those who want to lead modern sovereign statehood to its logical and historical conclusion, that is, to destroy the *societas civilis* for good. The aforementioned effort can be limited, i.e. remain with the more or less intense "reaction", or culminate in dictatorship. Even this turn of events, however, is nothing absolutely new, but it is actually only the form that the original ambivalence in the relationship of the nobility to the state takes under the new circumstances. On the other hand, the reversal of the hierarchy of enemies is noticeable in the difference between the exercise of the right of resistance and dictatorship, however much both are subsumed under the generic term "conservative activism". If the exercise of the right of resistance was a rebellion against the sovereign state from the position of feudal autonomy, the dictatorship is a suppression of the revolution from the position of the (aristocratically dominated) state.

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<sup>2</sup> See above chap. II, para. 3a.

Reaction and dictatorship, however, did not constitute the entire spectrum of noble behavior in the face of the revolutionary danger. At the other end of the spectrum are attempts at reconciliation with moderate liberalism, which are all the more serious as the revolution in its now unstoppable course is turning into a social revolution of the fourth estate.

In turn, innumerable nuances and combinations can be registered. The problem of bindings, or tactical and strategic questions, are gaining more and more importance and determine not only the moves on the political chessboard, but also ideological reshuffles, openings or risk pullers. The conservative principles, based on the legal conception of the *societas civilis*, however, remain stable, and the colorful diversity of thought, which the simplicity of these principles sometimes hides from the uninitiated eye, is not due to a desire for theoretical discovery. Rather, it concerns strategic-tactical questions and has also arisen largely in the treatment of such questions, which in turn can be formally reduced to a single class: how far may one go in the way of sovereign statehood or in the direction of liberalism in order most effectively to put a stop to revolution? Precisely because this question gave rise to a diversity of answers, and precisely because the extreme positions of this diversity - through several and almost imperceptible overruns - liberate. Precisely because this question gave rise to a multiplicity of answers, and precisely because the extreme positions of this multiplicity could be overcome by several and almost imperceptible transitions, it has happened that conservative action, initially oriented to quite specific goals, has, under the effect of the heterogeneity of purposes, given rise to results which have blown up not only the framework of the original objective, but the conservative framework itself; from this point of view, perhaps, Bismarck's action can best be understood historically. Here, however, we are primarily interested in the observation that conservative ideological reconstructions after 1789 will take shape when dealing with strategic and tactical questions, while the principles of the legal conception of the *societas civilis* represent, as it were, the self-understood ideological constant. As we shall see, this is the case even with high-flying historical-philosophical constructions, which also belong to the conservative new formations (e.g. periodization of history with regard to the restoration efforts or historical-philosophical evaluation of war with regard to the defense of the ruling position of the nobility as the traditionally war-leading class). This shows once again the poverty of a "purely intellectual-historical" analysis of conservatism.

As already noted<sup>3</sup>, conservative language is characterized primarily by 1789 - by extensive secularization and modernization, which further obscures the continuity of scholastic-Aristotelian or feudal-German thought in both major phases of the history of the conservative phenomenon.

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<sup>3</sup> S. o. Chap. I, Sect. 1.

The use of this language is partly due to the fact that the apologia for the *societas civilis* was no longer (primarily) addressed by clerics or jurists, such as Fenelon or Coquille, but (also) by intellectuals in the modern sense of the word, who had sometimes even spent their apprenticeship years at various Enlightenment schools. The ambivalent relationship of conservative politicians to "their" intellectuals gives a different perspective to the increasing internal tension in the conservative camp under the circumstances of the accelerating dissolution of the *societas civilis*, and will therefore have to occupy us as a symptomatic phenomenon in the last section of this chapter. The characteristic disengagement of counter-revolutionary conservatism from the language of the civil society, while at the same time adopting and defending the content of the traditional conception of law, is by no means causally related to the presence and impact of modern intellectuals within the conservative camp; rather, it has to do with the general imposition of the secular mode of expression as a result of the displacement of scholasticism by mathematical science and by the new sciences of man and society. From this point of view, the relationship of conservatism to enlightenment has not only a conscious negative aspect, but also a positive, albeit unconscious and unintentional one, and therefore it must be studied together with the role of conservative intellectuals and in the same perspective. The conservative attempt to use Enlightenment language and occasionally also (reinterpreted) Enlightenment ideas against the liberal and democratic alternatives of the Enlightenment represents, after all, the ideal counterpart of the endeavor to preserve the *societas civilis*, or what remained of it, through the use of modern statehood, of all things.

## 2. Consciousness of continuity among conservatives or the revolution as a continuation of absolutism

Our thesis that counter-revolutionary conservatism is a further development and reformulation of an already centuries-old ideological and political current corresponds to the consciousness of conservatives after 1789 that they would continue the struggle against an aberration of history that began with modern times. The inner connection of the modern idea of sovereignty with cen-

The conservatives have not been unaware of the threefold ideological options of the modern era<sup>4</sup>, however crudely and distortedly they may have portrayed them; their polemics against the socio-political changes and catastrophes since the 16th century are therefore combined with a fundamental rejection of equally old theories and views which, in their eyes, initiated or accompanied the socio-political aberrations. All aspects of what has happened in Europe since the 16th century appear to conservatives as a unified, fatal whole. The

The last three centuries", wrote A. Muller in 1809, are "a time of tremendous internal revolutions", which have been characterized by the striving for acquisition and possession, i.e. the rise of the bourgeoisie, as well as the dissolution of the "old national federation", i.e. the formation of modern sovereign states<sup>5</sup>. The video logical aspect of this same long revolutionary process is described by Fr. Schlegel as "the Damonian apostasy of reason in two stages"; from 1500-1650 this tendency triumphed within the church, from 1650-1800 within science.<sup>6</sup> Here, obviously, the spiritual fall from grace is seen in Protestantism, but the revolutionary republican cult of antiquity around 1800 had to draw the historical attention of the conservatives also to another ideological phenomenon of the early modern period, namely to the revival of Christianity in its opposition to Christianity. According to Jarcke, the dissolution of the Christian Germanic idea of law begins with the reactivation of the ancient republican conception of politics, as represented, for example, by Machiavelli. According to Radowitz, the revived paganism took three forms: an artistic one, oriented to sensual beauty (Raphael), a political one, aiming at a detachment from the "Christian-Germanic basis" in favor of the ancient ideal of the state (Machiavelli), and finally a metaphysical one, replacing the Christian religion with pantheism (Bruno)<sup>9</sup>. Stahl explains the implied connection between religious and political reorientation in the early modern period with the practical formulation that Machiavelli was "the Spinoza of politics," since in Machiavelli's work

The same detachment from the living God" is<sup>1</sup> visible in both - <sup>0</sup>detachment from the living God.

Bung from God, however, automatically means self-valorization of man, the claim of human reason to autonomy. With Grotius and Cartesius, Stahl thinks, the principle of subjectivity and the detachment from all

<sup>4</sup> S. o. Chap. II, Sect. 2.

<sup>5</sup> Elements, XXIII, p. 273.

<sup>6</sup> Fragments (1820) = Works, XXII, 53.

<sup>7</sup> Cf. Bonald's condemnation of the "legislateurs sophistes de notre siècle," who had their models in the „barbaric de la législation grecque et romaine" sought, Legisl. Prim., Disc. Prelim. = Oeuvres, I, 252.

<sup>8</sup> Verm. writings, I, 129.

<sup>9</sup> Fragments, II = Augs. very., III, 75f

<sup>10</sup> Legal phil., I, 344.



The sovereign claim of a creation of the state ex nihilo on the basis of the prescriptions of human reason is embodied precisely in the contract theory, which, according to the conservatives<sup>12</sup>, is one of the old and important ideological precursors of the revolution<sup>11</sup>.

The pagan-inspired turn to this world and the autonomization of theoretical and practical human reason are thus the two revolutionary hallmarks or stigmas of the modern era. On the socio-political level, they correspond to the appearance of the bourgeoisie as the class oriented toward this world, that is, toward acquisition and possession, and to the appearance of absolutism as the institutional embodiment of the claim that the state should be bound by the dictates of sovereign human reason. It is no coincidence that the origins of absolutism date back to the 16th century, when the struggle of the "Romanesque principle" against the "Germanic" began and the aspiration appeared,

The most important historical manifestations of this endeavor are, for Radowitz, the "false theocracy", which is the Protestant doctrine of authority or, in the Catholic sphere, in the guise of the "theocracy".

The "Byzantine" monarchy of Louis XIV appeared on the scene, the "soldier government" of Frederick William I and the German princes who followed his example, and finally the "philanthropic state" of Joseph II,<sup>14</sup> Radowitz does not fail to show his solidarity with the conservatives of pre-revolutionary times, and appreciatively mentions the struggles to preserve the "old historical France" at the time of the Fronde and the "old French" at the time of the "revolution."

Similarly, Jarcke describes<sup>5</sup> the phases of the universal "enforcement of unrestrained governmental power" as early as from the

16. But even more so in the 17th century", and sees their conclusion in phenomena such as

The "civil servant rule of Bonapartism," the "liberal civil servant rule" (even with a king at the head), or the liberal constitutionalism<sup>16</sup>; according to his conviction, the revolution of 1789 would have been difficult, if not impossible, to carry out "without first destroying or undermining the revolution".

<sup>11</sup> A. a. 76[0.,

<sup>12</sup> Haller, *Restauration*, I, 37-168, provides detailed and detailed information.

<sup>13</sup> Radowitz, *Fragments*, I = *Ausg. Very.*, 209f11,

<sup>14</sup> *Gesprache*, JV = *Ausg. Very.*, I, 124.

<sup>15</sup> *Fragments*, I = *Ausg. Very.*, 11, 164.

<sup>16</sup> Before and after Jarcke, 153 the conservative side often argued that Bonapartism was the completion of the French absolutism through the means provided by the Revolution, see, for example, Gorres, *Europa u.*

*d. Revol.* (1821), *Ges. Sehr.* XIII, 214; *Staatslexikon*, IV, 263; cf. the statements of J. Ring-

The old status and legal relations were to be replaced by the sovereign power.<sup>17</sup> German conservatives often noted with regret that the spirit of the Revolution, which leveled everything that had grown organically and did not tolerate any *puissance intermediaire*, "had also haunted the heads of many German princes since the middle of the 17th century<sup>18</sup>.

For most conservatives, there is no doubt that in the 17th century, under Richelieu and Louis XIV, aristocratic rule was severely tested and practically abolished. This was already Boulainvilliers' view<sup>19</sup>, which after the Revolution was more closely substantiated by Montlosier in a detailed historical retrospective; the Germans mentioned in the previous approach are also frequently committed to this retrospective. For Montlosier, there was only "une terre classique de la liberte," namely "la France antique," in which monarchy and the person of the monarch were not identical, but the higher levels of the social hierarchy participated in the exercise of monarchical power; thus the monarch was "une sorte d'individu collectif"<sup>20</sup>. Under Louis

XIV a "revolution totale" had taken place, which had dealt the "anciennes moeurs" many harder blows than the previous ten kings together. The end result was not merely the disenfranchisement of the nobility, but a paradoxical state of affairs that was actually much more explosive. For the nobility kept its social privileges or even got new ones in replacement of already lost ones, but these now stood in contrast to the loss of its political functions, thus they had a decorative or parasitic character<sup>21</sup>. Montlosier anticipates Toqueville's famous analysis not only with regard to this important sociological insight, but also by describing the events of 1788 and 1789 as a necessary consequence of a long development and the centralizing and leveling Jacobinism as a continuation and intensification of absolutist politics.

The people, he thinks, "a moins fait une revolution, qu'il n'a manifeste des revolutions deja faites"<sup>22</sup>.

All in all, then, the "context of the absolutist revolution" stood and the democratic one from below" according to<sup>23</sup> conservative thinking, and it was equally undisputed that, historically speaking, "the democratic one from above" was the only way to achieve this.

seis, cf. Dock, *Souveranitat*, 249, and E. L. v. Gerlach, *Nachlafi*, I, 298f. Cf. note 3 of 63 this chapter.

<sup>17</sup> *Verm. Schriften*, I, 71; cf. I, u39. III, 537.

<sup>18</sup> Campe, *Landstande*, 207; cf. Jarcke, *Verm. Schriften*, III, 281[.

<sup>19</sup> *Histoire*, III, 136.

<sup>20</sup> *Monarchy*, II, 135, 23.

<sup>21</sup> A. a. 0., I, f296, 304f, cf. II, 134.

<sup>22</sup> A. a. II, 0., f, 202, 209, 310.

<sup>23</sup> Thus E. L. v. Gerlach, *Aufzeichnungen*, I 66, 120; cf. 71.



The question now arose as to which structural similarities between absolutism and revolution had<sup>24</sup> made their historical continuity and interaction possible. The question now arose as to what structural similarities between absolutism and revolution had made their historical continuity and interaction possible. They appeared "identical" in the decisive respect that they "both constituted a negation of real and existing rights" in order to "substitute for them another condition found by theory. 2- Both<sup>5</sup> the absolutist princes and the revolting people abrogate existing rights by invoking a new authority, namely the state; just as the ruler goes beyond his rights in order to "usurp" "a so-called sovereignty," so too the people transgress their rights and create popular sovereignty as a revolutionary instrument<sup>26</sup>. The state now claims "absolute power," i.e., the right to override existing rights by acting and commanding in the name of the common good, to which everything must submit. Both forms of revolution, i.e., liberalism and democracy, share with absolutism the primacy of the common good, although they differ from each other in that liberalism conceives of the common good "more realistically," i.e., materially, while democracy is more concerned with the other aspect of absolutism, i.e., the "implementation" of the common good.

of the abstract principle of "equality" and centralization.<sup>27</sup> It

is basically synonymous with whoever promotes centralization: as a strengthening of the state defined and proceeding in this way, it has a revolving effect anyway.

tionary, and sometimes even more revolutionary, because more effective, if it is<sup>28</sup> carried out from above. Centralization is thus the great common denominator.

Louis XIV's saying "L'Etat c'est moi" is complemented and completed by Thiers's phrase "La France c'est Paris" <sup>29</sup>. Regimentation, equalization, and the elimination of the authority of individuals are the goal and the end of absolutist as well as revolutionary undertakings -<sup>30</sup> both are directed against everything that is status quo, so that "the action of the supreme power falls abruptly on the individual" and "the government is no longer directly connected with the state, but with the individual" <sup>31</sup>; in its urge to destroy the pouvoirs intermediaires, absolutism, this "grimace" of divine right, was just as inclined as the Revolution, in view of all the experiences it had made in the meantime with the Revolution, to introduce the general right of vote, "which intentionally and systematically ignores all differences and

<sup>24</sup> Baader, Writings, note.245,

<sup>25</sup> Jarcke, Verm. Schriften, I, 168.

<sup>26</sup> Muller, Of Necessity, 178, 179.

<sup>27</sup> Radowitz, Gespräche, IV = Ausg. Sehr., I, f116.

<sup>28</sup> Baader, Schriften, f246.

<sup>29</sup> Scheel, Berl. Pol. Wochenblatt, 79-82.

<sup>30</sup> For Rehberg's view on this, see Vogel, Kritik, f140.

<sup>31</sup> Baader, Schriften, 390f.

ignored"<sup>32</sup>. Here the conservative criticism hits the nail on the head and at the same time reveals its deeper motivation. Centralization is the direct expression of modern sovereign statehood, because it brings about the state independence of all individuals, which is possible only because the rule of the oikos leaders over their own "people" is eliminated; But if it is eliminated, then no distinctions of status and no statuses remain, man appears as an autonomous individual and no longer as a member of an oikos - and as an individual he submits to a law which in turn must be universal (i.e. centralistic), since it applies to basically equal individuals; therefore the conclusion is also obvious that law can be created by all individuals if they, for example, have the right to vote. e.g. if they have the right to vote: Centralization and democratization thus also belong together. - What from the absolutist and revolutionary point of view is praised as the liberation of man from the will of the leader of the oikos precisely by his submission to a universal and impersonal law, seems to the conservatives like enslavement: People lose root, protection and support, and the isolated individuals, weak in themselves, finally become mute subjects of an omnipotent and omnipresent centralized government; the atonization of society and tyranny are related in nature and result necessarily and simultaneously from the interaction of absolutism and revolution.

The conviction that absolutism and revolution were historically and structurally related, even identical, was commonplace among conservatives in the first half of the nineteenth century - and in this respect Tocqueville did nothing other than ingeniously vary a commonplace. Nevertheless, there are certain cases in which this conviction was not explicitly rejected, but rather suppressed or discreetly concealed. This is not a fundamental change of the conservative position on this question, but rather a polemical and tactical rationale. For example, at the time of the Restoration, French conservatives were forced to remove dark spots from the image of the pre-revolutionary past, since it was necessary to protect the political

tically implicative<sup>33</sup> interpretations of that past <by liberal historiography. The need to avoid conflict and to

The conservatives, however, had already failed to create a harmonizing historical picture shortly after 1789, when the nobility began to see the Crown not as an actual or potential enemy, but as the ally in the struggle against the Revolution. In Bonald's work, all these interlocking motifs result in an almost idyllic description of French history before Against1789. the liberals, he claims that old France had always had a well-functioning "constitution," which had protected the privileges of the nobility.

<sup>32</sup> E. L. v. Gerlach, Nachlaß, I, 36.

<sup>33</sup> Mellon, Polit. Uses, 63 ff., 92ff.

The nobility were justified by their services to the state and the social differences were easily overcome by talent, etc. - in short, they had a great deal of experience. justice and *liberte et egalite politique* prevailed; the relations between

The crown and the nobility are not specifically discussed, but the reference to the well-functioning constitution gives the impression that there were<sup>34</sup> no problems worth mentioning historically. Only three years after the execution of Louis XVI, Bonald's longing for the monarchy was already so strong that in his main work he went so far as to condemn the autonomy efforts of the provinces, to express reservations about the excessive power of the Estates General, and even to approve of the institution of the Intendants, although he would like to see them more closely tied to local self-government<sup>35</sup>; Louis XIV is also praised for not having been free, but for not having been able to act freely. is also praised, not because of his policy towards the nobility, but as part of the general glorification of past French greatness<sup>36</sup>. The expedient nature of this idyllic portrayal of the *ancien regime*, while concealing the consequences of absolutist policies for the nobility, becomes clear, however, when the same Bonald argues elsewhere in the same way as conservatives who insisted on the continuity between absolutism and revolution, and laments the mistakes of monarchs from Francis I to Louis XIV: „nos rois, entraines par le torrent des innovations, altererent l'antique et venerable esprit de la constitution franc;aise"; here the aspects of the socio-political disempowerment of the nobility are described according to the usual scheme: Cession of judicial and military functions to state officials, abandonment of the countryside and concentration in the cities or at court, luxury, slackening, etc..<sup>37</sup> The efforts of certain conservatives, especially French conservatives, to place the relationship between king and nobility on a new, exclusively counter-revolutionary basis by means of a harmonizing presentation of the past, did not manage to displace the typical conservative view of the continuity of absolutism and revolution; Although all conservatives were aware of the now urgent common counter-revolutionary task of king and nobility, protests such as Bonald's were unapologetically condemned, especially in Germany. Schlegel described the hymns of French ultras for Louis XIV as "a strange example of the now prevailing lack of clarity and confusion of concepts" and pointed out once again that the "French" were not the only ones to be condemned. The same destructive principles... are<sup>38</sup> represented by quite opposite parties" and "are found just as much in many of the most legitimate governments.

Baader also recalled in a polemical turn against the French „Ultra-Royalists" to the common root of Louis XIV's monarchy rnit. the Enlightenment and Jacobinism-<sup>39</sup> It *must be* noted, however, that the The conservative camp as a whole, for all its statements about the continuity of absolutism and revolution and for all its condemnation of "ultraism," was under pressure, if not to protect the absolutist past, then at least to manage the difficult present with the help of "absolutist means. Thus, the rejection of the absolutism of the pre-revolutionary past could also be polemically and propagandistically conditioned, at least in the sense that it was supposed to prove the anti-absolutist, i.e., above any suspicion of tyranny, attitude of those, of all people, who were more or less eager to ultraistic" methods. Dictatorial plans were always forged<sup>40</sup> also by representatives of the view of the continuity of absolutism and revolution.

### 3. Law, Sovereignty and State Power in Conservative Thought after 1789

#### *a. The Rejection of the Feasibility of the Real and its Implications*

Apart from the subjective conviction of the conservatives after 1789 that they were basically continuing a struggle that had already begun with the dawn of modern times, the objective-structural proof of the origin of their theories from the legal conception of the *societas civilis* consists in the fact that the latter revolve around the principle of the aforementioned legal conception as around an ideal axis, indeed that they deduce themselves from the same with logical coherence. As we know, that principle was as follows: Law is not made, but" *is*, and it is as a component, expression and outgrowth of an independent divine-national order. Man, who by his very nature is equally bound to this same order, cannot therefore create law at will, and any such attempt would be tantamount to the ungodly striving, doomed from the start to failure, to unhinge the order of being. In this sense Bonald writes that man can no more give a constitution to society than he can to a body.

The author endeavors to conceal the pre-revolutionary conflicts between absolutism and the nobility in favor of a politically expedient harmonizing presentation, see *Werke*, VII, 372f.

<sup>39</sup> *Writings*, 238f

<sup>40</sup> See section 3d of this chapter.

<sup>34</sup> *Observations sur l'oeuvre de la baronne de Stael* ....., *Oeuvres*, VII, esp. 636ff., 639ff., 681ff., Cf. Maistre, *Considerations sur la France*, VIII.

<sup>35</sup> *Theorie du Pouvoir*, III, (22), 4-5 = *Oeuvres*, IV, 285ff.

<sup>36</sup> A. a. IO., 1-24, = *Oeuvres*, III, ff., 210230.

<sup>37</sup> *Traite du Ministere Public*, V-VII = *Oeuvres*, II, ff.130,132,134

<sup>38</sup> *Signatur des Zeitalters*, *Werke*, VII, 551, 495, 513 f., 524. Schlegel himself, in his lectures on modern history given at the 1810Viennese court, had followed Mog-

The first is to give weight or extension to matter; for constitutions are "necessaires dans l'acception metaphysique de cette expression", i.e. every change same miiBte upset<sup>41</sup> nature -<sup>1</sup> Are laws, like Bonald in the If we assume, following Montesquieu, "rapports necessaires qui derivent de la nature des choses", then every pouvoir legislatif arises, not only with regard to the lois fondamentales, but also to the lois civiles. Nature acts as an invisible legislator. Nature acts as an invisible legislator, by bringing into being customs, which allmahlich "force de loi" receive, or however by putting all kinds of obstacles in the way of bad human laws and thereby to their correction. forces<sup>42</sup> - In a joi necessaire there is the volonte generale, which follows the precepts of the

The will follows the natural order and thus differs from the "volonte depravee et particuliere de l'homme" t43: as can be seen, Bonald uses Rousseau's formula here with polemical intent, i.e. to contrast the bad volonte generale with the good one and to eradicate any legislative voluntarism from the concept of the volonte generale. Only a degenerated will could want something idiosyncratic and weigh itself in the self-centered exchange, it had discovered something radically new in the art of government, which now had to be put into practice. But if law and legal constitution are anchored in the divine-national order, then, as Burke writes, there is nothing essentially new to be discovered<sup>44</sup> in the art of government, any more than in morality. The best and highest thing that human wisdom can do under these circumstances is to make good use of what nature has provided; to create something ex nihilo is beyond its power<sup>45</sup>. In this sense, an anonymous commentator said that "not the origin and existence of all things in life and in the state, but only their use depends on the will of man, and that he must submit to revealed truth and revealed law."<sup>46</sup> The same thought was formulated more epigrammatically by de Maistre: L'homme peut tout modifier dans la sphere de son activite, mais il ne cree rien"<sup>47</sup>.

Now, if no constitution and no great institution of rational superstructure

and sovereign will to their origin<sup>48</sup>, wherein then can the What is the work of good legislators? These act, according to de Maistre, "par instinct et par impulsion" and do nothing more and nothing else than what is required in custom and in the

<sup>41</sup> Theorie du Pouvoir, Preface = Oeuvres, III, 9.

<sup>42</sup> A. a. O., I, 6, =3 Oeuvres, III, esp. 316f, 327.

<sup>43</sup> A. a. O., I, 1, =3 Oeuvres, III, esp. 47.

<sup>44</sup> Reflections, Works, III, 345.

<sup>45</sup> A. a. O., 441.

<sup>46</sup> Spain, 264.

<sup>47</sup> Considerations, VI = Oeuvres, Sp. 47.

<sup>48</sup> A. a. O.; cf. VII, sp. 54; cf. Bonald, Theorie du Pouvoir, I, 1, 12 u. 13 = Oeuvres, III, 114, 116.

The right is therefore not the creation of new conditions, but the compilation of<sup>49</sup> the existing ones. state in the form of decrees and commandments. Since the divine-natiirliche Ordnung, If the law, which also includes the law, is by definition one and unchangeable, then no case can be conceived in which new legislation could deviate significantly from the already existing law; on the contrary, new legislation that has become necessary must, for its part, also confirm those basic principles on which every human community must be based, i.e. it must tie in with the law and, with reference to the latter, cope with new situations that have arisen. The fatal voluntarist The legislative process will only be completely avoided, in my opinion, if the

law is recognized as the only possible framework within which the legislative solution of hitherto unknown questions must take place. This is, of course, directly reminiscent of the medieval view that new (positive) law could only appear as an interpretation of the traditionally valid legal principles. The direct influence of legal theories of societas civilis on this important point can be found in Burke, who mainly thinks of Coke when he contrasts the voluntaristic-revolutionary conception of legislation with the organic continuity of the common law.

<sup>50</sup> statement was Thebased on the idea that "not changing the substance, but regulating the mode". Although this statement referred to specifically English law, it was not a specifically English view, which could be derived from the

The main reason was not the "special features" of English development, but rather a self-understanding of the legal conception of the societas civilis in general. From this point of view, Marwitz also argued against Hardenberg's reform plan. After the usual conservative reminder that in matters of the constitution "nothing can be invented, nothing can be done, and nothing can be set up from scratch," he explains his idea of what should be done in a situation that admittedly can no longer be fully grasped by existing (positive) law: in this case, the traditional constitution should be "brought to light".

be revitalized and something better pinned on them"<sup>51</sup> . Basis of the Therefore, the further development of the law is not the creation of new principles, but the reexamination of the traditional ones for their deeper meaning and an interpretation of them that does justice to the present situation.

<sup>49</sup> A. a. O., Sp. 49.

<sup>50</sup> Reflections, Works, III, 258. The influence of the French coutumiers, Cokes and Hales on Burke's thinking has already been briefly pointed out by Pocock (Anc. Const., 173, 242 £). On the aspect of interest here, see Schell, Engl. Rechtsdenken, 103ff., cf. 5 ff. Burke often referred to Coke from his early days, see, e.g., Works, I, 5; IV, 292; VII, His66. famous and much-commented expositions on natural and artificial reason are basically a paraphrase of Coke's cilical theses, see above, ch. II, para. 4d.

<sup>51</sup> II, 1, 316, cf. 326.



was able to do. Thus, further development of (positive) law basically means a new confirmation of (divine-national) law in its substance.

To underline the impossibility and inviolability of law, conservatives used to emphasize its difference in character from law. As Radowitz noted, the term "law" has always stood for that which is divine and "independent of foreign will," while "law" referred to the

The essential difference between the traditional and the revolutionary conception lies in the fact that "according to the old concepts of the state ... the law is only the expressed right". The essential difference between the traditional and the revolutionary conception, however, lay in the fact that "according to the old concepts of the state ... the law is only the expressed right" and as such not only "physically binding" but also "binding".

obedience for the sake of God," whereas according to the teachings of "revolutionary state wisdom," the law was purely human and derived from the

In this way, the old link between the law and the law disappeared and was replaced by the equation of law and law that characterizes<sup>52</sup> despotic or democratic states. Even earlier, Hal ler had deplored the fact that the word *lex* or *loi* no longer meant the "general natural (divine) law" but was<sup>53</sup> attached to "all human ordinances, regulations and commands" and thus degraded. Since this had already happened, the consequence was obvious for the political language of the conservatives: "The law, the eternal, unwritten law, is... to be distinguished from the law."<sup>54</sup> In this distinction, however, the emphasis was on the feasibility, i.e., the purely human character of the law, as opposed to the impracticability, i.e., the divine origin of the law. In practice, this meant that even laws made according to all the rules of revolutionary natural law and the principle of popular sovereignty could not, under any circumstances, override (divine) law. The "volontes reunies," writes de Maistre, "forment le reglement et non la loi" <sup>55</sup> apparently because they depend on their own strength and lack the higher divine legitimacy. For legitimacy coincides with the will of God, while the will of man is no more capable of creating anything than legality; the magic that emanates from the word "law" is thus a symptom of the decline of a community from legitimacy to legality, from the organic to the voluntaristic.<sup>56</sup>

Legitimacy also the conservative reference to the subordinate importance of written

<sup>52</sup> Fragments, I = Ausg. very., II 174,, 200,264.

<sup>53</sup> Restoration, II, 67 note 4, 177. Cf. Milller's argument against the contemporary tendency toward a fundamental distinction between positive and natural law, Elements, VI = pp. 80.

<sup>54</sup> Schlegel, Fragmente (...1820) = Werke, XXII, 50.

<sup>55</sup> Essai sur le principe generateur... , II = Oeuvres, Sp. 111.

<sup>56</sup> Bonald, Pensees, Oeuvres, VI, Likewise 101. Jarcke, Verm. Schriften, III, 114f.

The "racines des constitu tions politiques" or the unwritten "habits" or "manners"<sup>57</sup> are more deeply rooted.

Law in the conservative perspective has not only a certain essence, which goes back to its anchoring in the divine-national order, but also a certain content, which clarifies what the ontological nature of law is supposed to mean concretely for the social relations of rule. This content is summarized in the conservative concept of justice, which, like the concept of law, is taken directly from the ideological arsenal of the *societas civilis*. Justice is actually understood in the sense of the Aristotelian-Scholastic *justitia distributiva* and means as much as to leave to each his own"<sup>58</sup>. We have already argued<sup>59</sup> that this conception of justice was virtually opposed to any universalist idea of equality in the sense of modern natural law, in that it implied a necessary connection between right and privilege. The experience of the Revolution forced conservatives to reaffirm this connection, and Montlosier remarked as late as 1789 that *equite* and *egalite* were currently being mistakenly confused with one another<sup>60</sup>. For the conservatives, however, equality could mean nothing other than equal subjugation of all under laws that sanctioned<sup>61</sup> existing inequality. And if they fought the modern state - in whatever form it appeared - it was not least because it was inherently linked to a concept of equality or justice that differed from it. The "omnipotence of the absolute state" and „welfare" as the supreme purpose of the state were in obvious contradiction with the conservative concept of justice: the former, because it was precisely the equalization of all subjects' (rights) that made it apparent, and the latter, because welfare for all had to entail the participation of all in certain rights, rights that had hitherto been denied to many or most. Thus, it is not by chance that the conservative concept of justice is defended precisely against state absolutism and the doctrine of welfare<sup>62</sup>, claiming that "inequality is the constant companion of true freedom. The incompatibility of freedom and equality became a favorite conservative motive<sup>63</sup>., especially against the demand for equality.

<sup>57</sup> S. the corresponding passages in de Maistre, *Essai sur le principe ...* , IX = Oeuvres, Sp. 116; Jarcke, Verm. Schriften, III, 74f; Burke, *Letters on a Regicide Peace*, I = Works, V, 310.

<sup>58</sup> Typical formulations in Haller, *Restauration*, II, 378; Marwitz, II, 311;2,309, Radowitz, *Fragments*, I = Ausg. Schriften, II, 174; cf. Moser, *Werke*, IX , 335.

<sup>59</sup> See above Ch. II, Sect. 2.

<sup>60</sup> *Monarchy*, II, 240.

<sup>61</sup> Cf. Moulinie, Bonald, 351.

<sup>62</sup> The whole train of thought in Radowitz, *Fragments*, I = Ausg. Schriften, II, 234,243, 287.

<sup>63</sup> See, e.g., Muller, *Elements*, VII = pp. 95.

for equality before the law. Jarcke described this equality as

In the same way, he also reminds us that this freedom, because of its coherence with the genus of unequal rights, has actually always consisted only of special freedoms or privileges and rights, and that the transformation of freedoms into "freedom" must lead to the death of true freedom. If, then, revolutionary liberty was egalitarian at least in the sense that it aimed at the abolition of privileges and equality before the law, the conservative conception of liberty had to combine itself all the more closely with the rejection of that equality and with the concept of *justitia distributiva*.<sup>64</sup>

In the light of the statement that *justitia distributiva* constitutes the content of law, it is possible to understand what conservatives mean in concrete terms when they affirm<sup>65</sup> the divinity of law with almost existential seriousness: they mean that every existing "own right" or "prerogative right" is "divine right" because it is God's will and commandment to "hold sacred" property and the right of others. They think that every existing "own right" or prerogative is "divine right", "because it is the divine will and commandment to hold sacred the property and right of others"<sup>66</sup> - and they mean this from the position of those who possess the aforementioned divine rights. The divinity of the right does not only protect the existing rights of property, but also the authority, whose main task is to do justice, that is, to watch over<sup>67</sup> the strict observance of the principle "to each his own". If, in the first place, the authorities are, in their essence, "the office of the divine law"<sup>68</sup>, respect for justice must be expressed as respect for the authorities. Respect for authority, like respect for divine law, is related to man's inability to make law for himself; renunciation of sovereign lawmaking in the light of the divinity of law and unproblematic submission to authority are two sides of the same coin. Unable to create the order of being or law by his own efforts, man participates in it only when he obeys the God-given authority-<sup>69</sup>enemies of the authority set by God" are therefore those who forget or deny man's inability to create law and, by denying the authority of the law, are those who do not want the law to be made by man.

<sup>64</sup> Verm. writings, III, 131; I, 25, 139, 140, 115, 116.

<sup>65</sup> See, e.g., the reprinting of E. L. v. Gerlach, *Aufzeichnungen*, I, 234, 255, 358. Cf. the elaborations of Wilhelm v. Gerlach, quoted in Scheel, *Berl. Pol. Woch.* 51.

<sup>66</sup> Thus Jarcke, *Verm. Schriften*, I, 28; cf. III, 70.

<sup>67</sup> See, e.g., Radowitz, *Fragmente*, I = *Ausg. Schriften*, II, 268; Jarcke, *loc. cit.* 84.

<sup>68</sup> E. L. v. Gerlach, *NachlaB*, II, 778.

<sup>69</sup> Cf. *Staatslexikon*, III, 111-122 (*Art. Autorität*).

The first step was to declare him the supreme lawgiver and judge, "to make mankind a god.

Now the polemic point of the thesis of the divinity, i.e. impracticability of the right is revealed: it is directed against those who want to create new, human right and thereby hit that prerogative or property and that authority which, according to their own belief, is under the protection of the divine right. The "fundamental problem" of the time, namely the "almost total lack of respect and reverence for the right"<sup>71</sup> is therefore due to the sinister, but nevertheless historically effective presence of people who equate their own will with the right<sup>72</sup> and want to create the<sup>73</sup> community from the beginning, regardless of its historical development. Voluntarism must increase as the divinity of law, i.e. the determination of the human will <by superhuman factors> is lost sight of or called into question: "the more they descend... into <the> realm of absolute will, the more Damonian they become."<sup>74</sup> This voluntarism can ultimately legitimize itself only by appealing to the collective will and insight of those who are willing to submit to purely human law, and in this respect the disengagement from divine law entails<sup>75</sup> popular sovereignty as its necessary, if not from the outset obvious, consequence. Apart from the constitutional implications in the narrower sense, however, the declaration of the total human will as the ultimate legitimizing authority is inevitably connected with a collective divinization of mankind, or rather with the divinization of mankind as a collective. Baader summarized the structural parallelism of popular sovereignty and the divinization of man in the following words: "Actually, the doctrine of autonomy or absolute sovereignty of man is only a copy of the doctrine of popular sovereignty, and man is free according to the latter, as every individual citizen is free according to the latter, because he has no one above him, and equal to everyone else, because everyone has an equal share in this sovereignty"<sup>76</sup>. Sornit turns the conservative critique of the deniers of divine right anew into a critique of modernity in general. Since the last three centuries this human pride of the modern age has been stirring up, which wants to make history itself instead of accepting it humbly", wrote Fr. Schlegel<sup>77</sup>.

<sup>70</sup> Thus Leop. v. Gerlach in a letter to E. L. v. Gerlach of 16.4.1848 = *NachlaB*, II, 506.

<sup>71</sup> Jarcke, *Verm. Schriften*, I, 168.

<sup>72</sup> Burke, *Letters on a Regicide Peace*, I = *Works*, V, 267.

<sup>73</sup> Burke, *Reflections*, *Works*, III, 278.

<sup>74</sup> Schlegel, *Fragmente* (1821) = *Werke*, XXII, 74.

<sup>75</sup> Radowitz, *Fragmente*, I = *Ausg. Schriften*, II, 273 f.; *Gesprache*, IV = *Ausg. Schriften*, I, 123.

<sup>76</sup> *Comments*, 455.

<sup>77</sup> *Philos. d. Gesch.*, XVIII = *Werke*, IX, 416.



The delusion of the "sovereignty of princes and peoples" derives from the "delusion of a certain sovereignty of man" that has been going on for three centuries.

have<sup>7</sup> grabbed-<sup>8</sup> As early as the 1800s, it was a common practice among conservative ideologues to

It was a commonplace that the revolt against God, which manifested itself in the claim of sovereign making of law by man, was<sup>79</sup> partly the precondition and partly the absolute culmination of the revolt against traditional law and authority. Thus the conclusion was obvious that the revolution, in contrast to the mere revolt, which aims<sup>80</sup> only at the "violent change of the rulers," was basically a religious phenomenon, i.e., a movement that was not merely a "violent change" of the rulers. It was a movement that sought to establish not only the political organization of the civil society, but also the metaphysical ideas that guided the behavior of men in the civil society; this explains the "orgueil des doctrines" and the struggle for the "domination over the spirit" that characterized<sup>81</sup> the revolutionary age as well as the period of the religious wars. The intellectual weapon of the revolution in this battle for the spirits is rationalism - a word that the conservatives very often do not use in its technical-philosophical sense, but to designate that ideological attitude that assumes the primacy of man and human ratiocination as the sovereign founder of its own autonomous order. Rationalism is thus "a construction from the intellect and reason on the human basis"<sup>82</sup>, a belief in the sovereignty of reason,"<sup>83</sup> i.e., "not merely unbelief in God," but a "belief in God. The origin of the revolution *must* lie in this way of thinking, when it is<sup>85</sup> defined as "the grasping of the whole public state on the will of man"<sup>84</sup> instead of on God's order and fiat".

These are the final socio-political and ideological implications of the thesis of the divinity and therefore impracticability of law. It is not difficult to see that the conservatives could gain these implications only by a logical leap. For them it was a foregone conclusion that they held about the monopoly of interpretation of God's will and that, consequently, the mere assumption of the divinity of law had to amount to the approval of the conservative definition of the content of this same law. For obvious existential reasons, they were not ready to realize that the divinity of the right was not in itself, but only by a

<sup>78</sup> Of necessity, 177.

<sup>79</sup> See, for example, Barruel, *Abrege*, II, 403; see La Mennais, *Essai*, I, 394.

<sup>80</sup> Radowitz, *Fragments*, I = *Ausg. Schriften*, II, 198f.

<sup>81</sup> Bonald, *Observations*, ... *Oeuvres*, VII, 669, 621.

<sup>82</sup> Radowitz, *Fragments*, I = *Ausg. Schriften*, II, 158f.

<sup>83</sup> Jarcke, *Verm. Schriften*, III, 3.

<sup>84</sup> Stahl, *What is the Revolution?* = *Parliam. Speeches*, 240.

<sup>85</sup> A. a. 234; 0., cf. parties, 66.

(human) act of interpretation <las could prove what they wanted to prove, and that in this respect God, <whose omnipotence was praised, was no less sovereign was treated by its own believers as reason was treated by its revol

tionary adherents; nor could they allow themselves to ask the elementary question of why revolutionaries should believe in a God who was on the side of their enemies. By demanding general submission to the divine will and at the same time recommending themselves as the only valid interpreters of the divine will, the conservatives basically demand that their enemies regard them as they regard themselves, namely as the group interpreting the divine will in a binding way and thus as the group ruling eo ipso in a community obeying this will. The absolute claim to rule, however, consists precisely in making the demand on the enemy that he share<sup>86</sup> our self-understanding.

In spite of all the logical li.icks and spri.ings, the conservatives still had to argue from God and the divinity of law, since they were the heirs of the ideology of the *societas civilis*. But there was also an additional reason for this. A purely historical derivation of law would eventually end up with relativistic conclusions that could not have a legitimizing effect. This danger is visible in the rare cases in which conservatives used auxiliary historical constructions to explain the formation of property or dominion rights. Then their argument was as follows: even if at the beginning of (our) rule and (our) property there should be usurpations and crimes, right arises <hole from wrong, in that in the course of time **all** those who <las suffered wrong have died out together with their descendants and restitution is no longer in question; the si. In <sup>7</sup>this way, however, the question of right became a question of the obsolescence of injustice,<sup>8</sup> and the only reproach that could logically be derived from it against the revolutionary violation of existing rights was that this violation happened only recently; to this, of course, one could counter that the victorious revolution was willing and able, <las to wait out the extinction of all their enemies, or even to take matters into their own hands.

<sup>86</sup> In this respect, the argumentation of the early La Mennais in support of ecclesiastical authority is significant. After La Mennais has deduced the necessity of authority from the weakness of human reason, etc., he asks how the true holder of authority is to be found out. The answer is easy for him: it is enough to look at ourselves to find out, *s'il existe une societe spirituelle et visible qui declare qu'elle possede cette autorite* (*Essai*, II, 204; blocked by me). This societe, then, was the only one that had the right to expect that its self-understanding be taken in its nominal value, i.e. in its self-understanding and objective function would coincide.

<sup>87</sup> Thus Haller, *Restauration*, II, f. 576, 580; following him Jarcke, *Verm. Schriften*, III, 112 ff.; Radowitz, *Fragments*, I = *Ausg. Schriften*, II, 220ff.; E. L. v. Gerlach, *Nachlall*, I, 33.

In the face of such obvious answers, the conservatives did not dabble any further in this line of argument; nor did they find interest and approval in the statement that the principle of "to each his own" applied absolutely, but that what was to be regarded as "his own" could "only be judged according to the legal consciousness of a certain time and of a certain people" - although this statement was made to support the argument to each his own can be judged "only according to the conviction living in the legal consciousness of a certain time and a certain people" - although this statement was made in support of the thesis that historical law is no more arbitrary<sup>88</sup> than divine law. The ways of God, however, were the traditional conservative terrain, while to history as a realm of the human, claims to monopolies of dominion and interpretation were made by others first. Thus, in general, it seemed much safer to insist on the familiar ways and ways of thought, even though conservative thinking after 1789 could<sup>89</sup> not do without certain concessions to the meanwhile largely prevailing enlightenment terminology and language.

*b. The Rejection of the Modern Idea of Sovereign Initiatives and the Question of Separation of Powers*

The rejection of the conservatives to the modern idea of sovereignty is already evident from their implicit adherence to the thesis of the impossibility of law; for this idea appeared simultaneously and in the closest connection with the view that law is <las work of a sovereign and concretely localizable will, which, as the victim of law, is exempt from submission to it. The conservative rejection of the modern idea of sovereignty, however, is not only implicit, but also <lled by explicit statements, as would be expected with respect to such a neuralgic point. First of all, it is known among conservatives that there is a specifically modern "concept of the sovereign power of the state", which was formed and asserted<sup>90</sup> not least in the effort to pacify the state during the time of the religious wars. They want to<sup>91</sup> contrast this concept, which is "absolute," with their own "relative" conception of sovereignty, and furthermore they connect this opposition with the leitmotif of the contrast between divine and human right, between the fear of God and hubris. In Bonald's formulation: "Ces deux syste

mes sur la souverainete dans la societe correspondent parfaitement a deux systemes sur la souverainete de l'homme sur lui-meme ou sur sa raison: Jes uns ne donnent d'autre regle a sa raison que sa raison meme; Jes autres Jui donnent, dans un Joi

<sup>88</sup> Radowitz, Fragmente, I = Ausg. Schriften, II, 267.

<sup>89</sup> See below section of this 8chapter.

<sup>90</sup> Schlegel, Fragments (1826) = Works, XXII, 232f

<sup>91</sup> A. a. 0., 3.

divine, un regle superieure a sa raison"<sup>92</sup>. what Bonald finds objectionable about the modern concept of sovereignty is above all the fact that here the mere will or the mere authority is sufficient for the foundation of valid positive law, namely that the earthly sovereign, who is dependent on himself, can make law without being right: "l'auto rite des hommes n'a pas besoin d'avoir raison pour valider leurs actes politiques"<sup>93</sup>. Bonald counters this with an attempt to prove the existence of God in order to derive from this the duty of the earthly sovereign to obey the commandments of the heavenly and true sovereign.

But this unambiguous subsumption of earthly rule under heavenly rule leads to a depersonalization or even dissolution of the idea of sovereignty, which, however, is quite in line with the conception of law of the *societas civilis*. The concern to secure the divinity of law remains so decisive that a *sovereign* source of law on earth can no longer be located at all and sovereignty detaches itself from any concrete bearer. Thus Bonald thinks that in a "societe constituee" the sovereign's predicate belongs to the "volonte generale" or the "nature", while the monarch or the government only holds<sup>94</sup> the office of a "ministre" of that sovereign. The distinction between "souverain" and "pouvoir" must therefore be made in principle, but according to Bonald this distinction is in fact respected only by those who see God as the sovereign and leave the mere pouvoir to men; on the other hand, sovereignty and governmental power are mixed up by the advocates of the godless doctrine of sovereignty, such as Rousseau, which ultimately deprives<sup>95</sup> the government of its legitimacy. The thesis that sovereignty in itself has nothing to do with governmental power, but is the authority that gives governmental power its indispensable legitimacy, is, of course, a refutation of the voluntaristic-activist concept of sovereignty, for which the actual and actual exercise of governmental power is constitutive, with reference to the legal conception of *societas civilis*. Precisely because Bonald argues from this conception, he does not feel obliged to ask himself the question who could build the legitimizing bridge between sovereignty and governmental power that he himself demands, if not the governmental power itself - which, however, would make it eo ipso a sovereign instance. Nor does A. Muller have to worry about a concrete localization of sovereignty on the basis of his own theoretical presuppositions when, following the traditional conception of law, he succinctly asserts that neither <the law, which is in itself a dead letter,> nor the peripatetic and frail earthly sovereign

<sup>92</sup> De la Souverainete, II = Oeuvres, I, 31.

<sup>93</sup> A. a. 0., 32.

<sup>94</sup> Theorie du Pouvoir, I, =6,3 Oeuvres, III, The 329.meaning of the formula "volonte generale" in Bonald was explained in the previous section.

<sup>95</sup> De la Souverainete, III = Oeuvres, I, 51.

could and could rule: The idea of right alone may compel"<sup>96</sup>. By placing the sovereign under the aegis of the omnipotent and solely binding (divine) idea of right, he ceases to be the one „who stands in the middle and seems to have power in his hands," and he is defined "as the idea of that great covenant which the people expresses and carries omnipresent down to its last, smallest element; that striving, pressing power of all the members of the people and of all past and future generations toward the middle point, etc.," etc. "Sovereignty is thus literally dissolved into thin air. Sovereignty is thus literally dissolved into thin air, but that is precisely the intention; for, as we must repeat, the argument here is based on the traditional conception of law, for which modern sovereignty does not and cannot exist, if law is<sup>98</sup> divine and if, therefore, the legislator is not the uncontrollable bearer of the ruling will, but <sup>97</sup>**Km:** 'e ox11v the Father".

The dependence of the conservative rejection of the modern idea of sovereignty after 1789 on the idea of *societas civilis* can be seen even in the use of language. Bonald, for example, renews the old<sup>99</sup> distinction between He describes respect for the "lois fondamentales" as a characteristic of absolute rule, which is lacking in arbitrary rule, which, however, uses legal (i.e. non-legitimate) means to destroy the lois fondamentales; <sup>100</sup>ecclesiastical rule can never be absolute, "puisque sa volonté est sans règle. This subjection of absolute power to certain rules means that its competences are limited, but that it remains unrestricted, i.e. absolute, within the limits set by the lois fondamentales or by divine law. This was the traditional conception of sovereignty to which conservatives remained faithful after 1789. Let us recall an important passage of de Maistre, which begins with the thesis that sovereignty is only "clans son exercise légitime" unlimited. Then de Maistre continues: "Car on peut dire également, sous deux points de vue différents, que toute souveraineté est limitée, et que nulle souveraineté n'est illimitée. Elle est illimitée, en ce que mille souveraineté ne peut tout; elle n'est !est pas, en ce que clans son cercle de légitimité, trace par Jes lois

<sup>96</sup> elements, III = p. 36.

<sup>97</sup> A. a. O., VII = p. 92.

<sup>98</sup> Schlegel, *Fragmente* (1823) = Werke, XXII, 129.

<sup>99</sup> See above chap. II, para. b3.

<sup>100</sup> *Pensees*, Oeuvres, VI, 188; *Démonstration Philosophique*, VII = Oeuvres VII, 64; *Observations ...* Oeuvres, VII, 653 f. Of course, conservatives know and use the adjective "absolute" also to designate modern sovereignty. In this case, however, it is interestingly contrasted with the conservative concept of sovereignty. Thus Stahl writes, "The state, though sovereign, is not the absolute power on earth," since it may not violate personal or acquired rights (*Rechtsphilosophie*, II, 155).2,

fondamentales de chaque pays, elle est toujours et partout absolue" <sup>10</sup>. Based on<sup>1</sup> this definition of "sovereign" and "absolu", de Maistre calls the sovereignty "infallible" and the government "absolu", wornit he means, that there can be no appeal against them and that their decisions are to be carried out without further ado and without recourse to the right of resistance<sup>02</sup><sup>1</sup> - but he does not mean that the source of the said decisions is the will of the sovereign. The difference is fundamental and marks the border between the traditional and the modern concept of sovereignty. How much de Maistre is attached to the former is shown by his main political concern, which is not to strengthen the sovereignty of the government, but "comment on peut restreindre le pouvoir souverain sans le détruire"<sup>103</sup>. Since, after the experiences of 1788 and 1789, the right of resistance, reinterpreted in the meantime as revolutionary, could no longer be claimed, de Maistre wants to achieve the limitation of secular sovereign state power <by restoring the pope to his medieval rights>, whereby he characteristically clarifies his intentions by reproaching the contemporary constitutionalists that they did not want to see the<sup>104</sup> connection between their own demands and the wise medieval practice with regard to the limitation of sovereign power. But even papal power, according to de Maistre, cannot and must not be sovereign in the modern sense: the ecclesiastical regiment is indeed monarchical, "mais suffisamment tempère d'aristocratie, pour qu'il soit le meilleur et le plus parfait des gouvernements"; for "le gouvernement monarchique tempère vaut mieux que la monarchie pure" <sup>105</sup>. Papal monarchy and secular monarchy are considered to be the same. What with the former are the councils, with the latter are the general councils, called "colegislateurs", whose decisions the pope or the king may under no circumstances overrule; thus it is ensured that the monarchy is not subject to arbitrariness and unpredictability<sup>106</sup>. As for the secular monarchy in particular, it is significant that de Maistre considers not only the rights of the king, but also those of the aristocracy, to be original and autonomous; the rights of the people, he writes, "partent assez souvent de la concession du souverain . . . ; mais Jes droits du souverain *et de l'aristocratie* . . . n'ont ni date ni auteurs"<sup>107</sup>. Even these original royal rights, however, are subject to the lois fondamentales, which mean as much as the constitution.

<sup>101</sup> *Du Pape*, II, 3 = Oeuvres, Sp. 332. Cf. II, 9 = Sp. 370: "Il n'y a point de gouvernement qui puisse tout. En vertu d' une Joi divine il y a toujours à cote de toute souveraineté une force quelconque qui lui sert de freine".

<sup>102</sup> A. a. O., I, =1 Oeuvres, Sp. 246f.

<sup>103</sup> A. a. O., II, =2 Oeuvres, sp. 328.

<sup>104</sup> A. a. .0 , II, 4 = Oeuvres, Sp. 334f.

<sup>105</sup> A. a. O. I, =1 Oeuvres, Sp. 247.

<sup>106</sup> A. a. O. I, =4 Oeuvres, sp. Similarly 258,260. Cortes, Obras, II, 522-524.

<sup>107</sup> *Considerations...* , VI = Oeuvres, sp. 47; blocked by me.

<sup>108</sup> and which cannot be abolished precisely because they have not been created by anyone: for a law stands above all others only if no one has made it; if someone had made it, he would also be able to revoke it or to disregard<sup>109</sup> it. Thus de Maistre reverses the principle of the modern doctrine of sovereignty, that the sovereign cannot be bound by the law, whose free creator he himself is.

We have discussed de Maistre's doctrine of sovereignty in some detail here because it paradigmatically contains<sup>110</sup> the overall conservative position. The analysis of the conservative conception of the character and powers of the sovereignty in the next section will show the extent of the reception and impact of the traditional doctrine of sovereignty in the thinking of conservatives after 1789. Here, in order to nuance the ideal type just described, we will refer to Haller's position, which does not contain any deviation from the basic principle, but an interesting variation in terms of the conception. With the traditional theologizing argumentation Haller combines a secular and partly naturalistic one, thus limiting the sovereignty of the prince not only by the divine right, but also by the power itself - a paradox which has misled many a contemporary and also many a researcher. It is certain for Haller that the law of power, i.e., the right of the stronger, which applies to all levels of the human The fact that the law of power makes itself felt in the people's coexistence must also have a determining effect on the question of sovereignty: The appeal to the law of power obviously turns against the doctrine of popular sovereignty<sup>111</sup> that is, against a doctrine of sovereignty which Haller considers despotic. But how can a dam against despotism be built from the law of power or from the right of the stronger? By taking the traditional principle of "il n'y a point de gouvernement qui puisse tout" advocated by de Maistre and transforming it into a "sovereignty doctrine".

<sup>108</sup> A. a. VIII O., = Oeuv res, Sp. 64.

<sup>109</sup> Essai sur le principe generateur , ...II = Oeuvres, Sp. 111.

<sup>110</sup> C. Schmitt, who wants to make a theorist of sovereignty out of de Maistre - apparently without exact knowledge of the texts and the intellectual-historical contexts, does not distinguish between the traditional and the modern concept of sovereignty, and Therefore, the essential characteristics of "sovereignty" are infallibility and inappellable decision, without raising the obvious question of the victim of law; thus, de Maistre's traditionalist or counter-revolutionary authoritarianism is transformed, most erroneously, into a decisionist doctrine of sovereignty (Political Theology, 71£). Schmitt's error apparently led Rhoden to see in de Maistre primarily a The author is not convinced that de Maistre's argumentation against absolutism is a "jurist" who has in mind an enlightened-absolutist ideal of the state and civil servants. Rhoden dismisses de Maistre's status-aristocratic argumentation against absolutism with the remark: "here the juridical precision of his Thinking!" O- de Maistre, esp. 104£, 243).

S. the detailed definition in Restoration, I, chap. ff.13

translated into the language of power: there is no power on earth that can do everything. Just as power is here naturalistically conceived, it is also held to be physically limited; for Haller cannot conceive of absolute domination of the commonwealth <by concentrated political power, which would be more in the nature of modern sovereignty. Power, then, can never become absolute, but there can be a power stronger than all others and the only one exclusively dependent on itself: Sovereignty consists ...in independence, in the fortuitous circumstance of having no human superior over it and of not having to<sup>112</sup> give account of its actions to anyone but God." This means that no one is able to enter the territory of the "sovereign" power; however, in view of the fact that no power is absolute, it also means that the "sovereign" power cannot in turn subjugate the territories controlled by the lesser powers. On the contrary, precisely because the law of power applies at all levels and not only to the "sovereign" entity, there must be several independent, though unequal, territories where the universal validity of the law of power is manifested by the presence of a power-bearer, so that a hierarchy of power-bearers comes into being whose rights are essentially the same, since they are all based on power or independence. The urtumous power of the lower levels thus limits the equally urtiimous but greater power of the highest level<sup>113</sup>; the sovereign therefore remains absolute only within the limits of his own sphere of power - which is quite in accordance with the traditional view. Haller explicitly denies the principle of the modern doctrine of sovereignty, that the right to legislate characterizes the highest power in the state, and says that the laws of the sovereign and private laws are not different in nature, but only in degree; the sovereign is above his own laws, but these are limited by<sup>114</sup> foreign laws or rights. And if the Prince treats the questions of the State as his private ones, it is not because of his generally recognized or factually existing power to do as he pleases, but simply because he himself is a private person, while at the same time the State remains so elementary and underdeveloped that it can be treated as a private matter by a private person, even the most powerful one. As a private person, the Prince has

<sup>112</sup> A. a. I, O., 452.

<sup>13</sup> A. a. O., ff417. Again young Radowitz Haller summarizes: "Sovereign is the one, who has no earthly lord above him", which does „not at least imply the "unrestraint downwards" (Fragmente, I = Ausg. Schriften, 11, 342£). Other conservatives, too, independently of Haller, have expressed the idea that the presence of Power or sovereign authority at all levels of society means both a restriction of the sovereignty of the highest level and a general affirmation of the principle of sovereignty as such - and thus indirect strengthening of the highest level as well. See, for example, the anonymous letters on statecraft, 240.

<sup>114</sup> Restoration, II, esp. £179,183,187, 217£, 377.




Haller's First is a sovereign because there is no modern concept of sovereignty, no modern concept of state, no modern concept of sovereignty, no modern concept of state, no modern concept of sovereignty, no modern concept of sovereignty. Haller's First is therefore sovereign, because there is no modern state and no modern concept of sovereignty. This is the last - rather trivial - consequence of the described - original - interpretation of the idea of power. Against the modern idea of sovereignty Haller uses not only this, but also the traditional argumentation, as can be seen, among other things, in his interpretation of God's grace. This does not mean that the ruler may break all human laws, but on the contrary that he is<sup>11</sup> obligated to God to uphold the law.<sup>5</sup>

Before 1789, conservatives knew and fought the modern idea of sovereignty as it appeared on the scene in the form of absolutism. In the Revolution, conservatives encountered this idea in the guise of popular sovereignty, which finds its concrete constitutional expression in a national assembly. The conservative view of the Revolution as a continuation and structural completion of absolutism took shape precisely on the basis of the assertion that the new *pouvoir constituant* had the same claim to sovereignty as absolutism, only to a previously undreamed-of degree of intensity. The conservative reaction intensified accordingly. The condemnation of popular sovereignty, as expressed by the constituent National Assembly, was accompanied from the outset by a rejection of the separation of powers. For it became obvious that this division, as it was demanded and practiced at that specific moment, did not intend the balance of powers, but amounted to the supervision and subjugation of the executive, led by the king, and at the same time to the omnipotence of the legislature, that is, of the power that wanted to *make* entirely new law and thus realize the modern idea of sovereignty in its purest form. Thus, when conservatives argue against the division of powers both pragmatically (the impossibility of such a division in view of the factual interdependence of the powers) and in terms of the theory of the state (the dire consequences of the division for the inner unity of the polity and thus for the fulfillment of its ethical purpose), they are basically fighting the modern idea of sovereignty in its revolutionary form. The struggle against the omnipotence of the constituent national assembly as a negation of liberty<sup>116</sup> began very early in France, and Rivarol tells us clearly why: in view of the fact, brought to light by the Revolution, that "*au fond il n'y a de pouvoir clans un etat que le pouvoir legislatif*", there is the danger of an overruling of the

other powers by them; thus, if one wants to use the powers that are in the possession of the legislative

<sup>11</sup> A. a. O., 64ff. Cf. ch. II, para. 3b.

<sup>116</sup> So abbe Maury, for example, see Godechot, *Contre-Revolution*, (34

If the revolution is to be tamed, legislative power must be divided by granting the<sup>117</sup> king a veto absolu and not merely a veto suspensif. Outside France, however, the question of the separation of powers and the relationship of the legislative national assembly to the executive and the king was quickly recognized. Brandes called the 1790 "legislative assembly" a "despot" and foresaw: "If the executive power is excluded from the legislative process, it runs the risk of being destroyed at any moment."<sup>118</sup> In 1793, Rehberg noted the fulfillment of this prediction, namely the subjugation of the executive and the king to the legislature, and criticized the inevitably abstract-geometric character of legislation passed by a legislative assembly isolated in its absolute sovereignty and thus dependent, as it were, on pure reason alone.<sup>119</sup> The talk of the "most timid despotism" of the legislative assemblies, which are not subject to any divine or natural law, as well as of the separation of powers as a constitutional-political means of "making the full  degrading the prince only to his servant," is a sign of the "most timid despotism" of the legislative assemblies, which are not subject to any divine or natural law.

The phrase "the people's representatives" soon became a conservative platitude<sup>120</sup>. It was not so much the limits that constitutionalism wanted to place on the power of government that disturbed the conservatives, but rather the "unlimited power" granted to the "so-called representatives of the people,"<sup>121</sup> which made constitutionalism the "sharpest contrast to self-government,"<sup>122</sup> since in it "all rights are transferred to centralized representation. Under these circumstances, it could be asserted once again that "state absolutism" could<sup>123</sup> emanate not only from princes, but just as much from parliaments or democratic assemblies conspiring with the principle of separation of powers. This resulted in a mixture that seemed intolerable to conservatives: on the one hand, state power was tremendously strengthened and centralized; on the other hand, however, it was destroyed by the separation of powers and thus had to suffer from a loss of authority. The conservatives oppose this with the opposite combination, namely a royal or state power limited by state (parliamentary) power, which at the same time, however, should be uniform and absolute in its boundaries; here, parliament would not be the supreme state power, but, on the contrary, its limit<sup>124</sup>. This again refers to the traditional conception of sovereignty.

<sup>117</sup> *Extraits du Journal, Oeuvres*, IV, esp. (184, 188 (, (189

<sup>118</sup> *Polit. Reflections*, (97,10

<sup>119</sup> *Investigations*, ff.150/102 ff.113,

<sup>120</sup> The Ausdrücke are from Haller, *Constitution*, ff.13,16 *Restoration*, II, 185.

<sup>121</sup> Thus Radowitz, *Gesprache*, IX = *Ausg. Schriften*, I, 226.

<sup>122</sup> L. v. Gerlach, *Denkwürdigkeiten*, II, 526. He then writes: France has never been more centralized than under the constitutional regime.

<sup>123</sup> Stahl, *Rechtsphilosophie*, II, 2, 157.

<sup>124</sup> Cortes, *Obras*, II, 775,780.



Burke, as is well known, was<sup>125</sup> also one of those who strongly attacked the unlimited and uncontrolled power of the legislature in France, as well as the subjugation of the executive or the king to it. If, with regard to the English situation, especially during the conflicts with George III, he in fact demanded the omnipotence of Parliament, in his struggle against the French Constituante he tended to put the fiction of the system of balances in the foreground,<sup>126</sup> and if he found the free mandate good for English conditions, he denied the right of the representatives of the Etats Generaux of 1789 to ignore the imperative mandate given to them and to constitute themselves as a legislative national assembly<sup>127</sup>. The explanation of this shift in position - for it is not a logical contradiction - is important for the conservative conception of parliamentary sovereignty, but it becomes possible only in the light of our discussion of the complicated relations between constitutional fiction and reality in eighteenth-century England.<sup>128</sup> On the one hand, he advocates the (de facto) sovereignty of the Parliament, in the new, narrower sense of the word (i.e. excluding the King), while on the other hand he pays homage to the fiction of the organic development of the common law and the harmonious balance in the constitution (i.e. the scheme: King in Parliament). Because both aspects are intertwined in his thinking as well as in his environment, he can focus primarily on one or the other, depending on the needs of the concrete situation, without having the feeling of a change of position. To the extent that French revolutionary developments brought home to him the ultimate implications of parliamentary sovereignty, therefore, a stronger approach to the English constitutional fiction was to be expected, as was also<sup>129</sup> evident 1789 in Burke's new assessment of the Konigtum. On the other hand, however, the departure from the motif of parliamentary sovereignty in England, however much it may *have been* dictated by tactical and propagandistic reasons, was not necessarily in contradiction to the condemnation of the sovereignty of the French legislature - and this because of the fundamentally different function of the two sovereign bodies mentioned. For in England the de facto sovereignty of the parliament (in the new sense of the word) served to defend the existing, i.e. the already established rule of the oligarchy, whereas the French Constituante used its sovereign legislative power to overthrow the traditional relations of rule. Precisely because the function of the English parliament was to conser-

In this case, the constitutional fiction, especially as far as the royal prerogative was concerned, could be maintained without major problems, but the French National Assembly could not afford such a luxury, since it would have to reckon with strong opposition from the Crown to its revolutionary plans if it had the constitutional instruments to do so. That is why Burke, like other conservatives, now advocates the royal prerogative: for in the meantime the nature and function of the sovereign body has changed. It should be recalled, moreover, that Burke had<sup>130</sup> rejected the radical version of the modern conception of sovereignty (i.e., "that any body of men have a right to make what laws they please - or that laws can derive any authority from their institution merely, and independently of the quality of the subject matter") as early as 1765, apparently with a sideways glance at the experiments of the English Civil War, which had been unsuccessful for the oligarchy. Thus, Burke approves of the sovereignty of a corporation in the sense that it serves not to preserve a rule but to overthrow it through radically new legislation. What disturbs him about the propagated popular sovereignty is not so much the people, but rather the sovereignty<sup>131</sup>, as legislation ex nihilo for the overthrow of the existing.

Finally, it should be noted that after 1789 the conservatives opposed the modern idea of sovereignty not only with divine right and its implications, but also with the view that legislation ex nihilo and under the sign of the will of the moment was incompatible with the idea of the people and the commonwealth, which consisted not only of the living, but also of the ancestors and descendants, to whom the legislator must always have regard. This view had already been put forward many times as a standard argument in the preceding centuries<sup>132</sup>; it was repeated or varied after 1789 by Burke and others, and finally adopted by the historical school. The conservatives, however, after the 1789 modern state sovereignty, wanted to fight it with two further arguments, which had already been used in the 16th century.<sup>133</sup> These were the unity of ethics and politics, i.e. the condemnation of the state reason, and the doctrine of civitas christiana, by whose rules the individual states should orient their activity. This will be discussed in<sup>134</sup> the following.

<sup>130</sup> Tract on the Popery Laws, Works, VI, 322. In the same paragraph reason of State and Hobbes are taken under beschu8.

<sup>131</sup> Cf. Hilger, Burke, 39 et seq.

<sup>132</sup> S. ch. II, para. 4d.

<sup>133</sup> Rexius, Studies, 498f.

<sup>134</sup> See section 4a in this chapter.

<sup>125</sup> Reflexions, Works, III, ff.290,496

<sup>126</sup> Appeal . . . , Works, IV, 207f.; cf. the good remarks of Schumann, Burke f.78

<sup>127</sup> Muller, Mandate, 21ff.

<sup>128</sup> See above Ch. II, para5.

<sup>129</sup> See the next section.

The fundamental fact that after 1789 the modern idea and practice of sovereignty developed its historical effectiveness primarily under the banner of the liberal-democratic revolution and no longer primarily as absolutism deeply influenced the relationship of conservatism to the monarchy. A nobility that had often been politically disempowered or put in the service of the state had to see in the monarchy, which was at the head of the already considerably expanded state apparatus, the strongest and also the only possible ally. As Mallet du Pan said in his witty way: "Pour ce qui est de la noblesse je ne sais pas si avec le roi elle pouvait quelque chose; mais ce qu'il ya de sur c' est que, sans le roi, elle ne pouvait rien"<sup>135</sup>. The great commonalities of blood and aristocratic ethics, often eclipsed in the heat of the struggle between the upper class of the *societas civilis* and the king as the bearer of modern statehood, were now quickly recalled; above all, it was recognized that, given what the Revolution meant, nobility and monarchy were bound to each other, for better or worse: If the nobility allows the throne to be attacked, the nobility is lost, for heredity applies. If the princes permit the nobility to be deprived of its vested rights, the power of the princes is shaken; their heredity stands alone, and is thereby endangered.<sup>136</sup> Despite this

In the face of the revolutionary threat of death, the nobility, while refreshing memories and deepening knowledge, never buried its old hostility to absolutism, but expressed it even in the moments of the courtship of the counter-revolutionary alliance with the monarchy; this shows once again how much the long struggle against absolutism had shaped the conservative imagination. The categorical rejection of absolutism and the simultaneous admonition to the monarchy to vigorously use the state resources at its disposal against the revolution resulted in an ambivalent position that was capable of several variations.

A good example of the new evaluation of the monarchy under the pressure and impression of the events of 1789 is offered by Burke, who, as Stahl<sup>137</sup> already knew, recognized "through the revolution the necessity of independent royal power". While he was still concerned about the 1770 royal prerogative for "dead and

In <sup>138</sup>1790, he left aside the English constitutional reality in favor of the English constitutional fiction and said that the English king was "a real king and not an executive officer" and that he was entitled to<sup>139</sup> considerable direct and even greater indirect power; In general, he advocates a strengthening of royal power at the head of the executive branch<sup>140</sup> and praises the monarchy as the guarantor of "property, order and regularity."<sup>141</sup> in a tone that was somewhat unusual in the early days. The same transformation was made by others in France somewhat earlier and in a more dramatic way. We <sup>142</sup>can disregard smaller examples, such as Ferrand, in order to concentrate on the paradigmatic case of d'Antraigues. In the context of the small front that preceded the Revolution of 1789, d'Antraigues emerged as an eloquent advocate of standard rights against the crown, and he did so - not without interest for the history of conservative thought - on the basis of the theoretical constructions of the state that had been developed among French conservatives since the monarchies of the sixteenth century. He recalls the original electoral character of the monarchy and the legislative status of the Champs de Mars<sup>143</sup>, he attributes to the General Estates the right to decide questions in a binding manner if necessary, he recognizes the right of resistance, he polemizes retrospectively against the absolutism of Richelieu and Louis XIV, etc., etc..<sup>144</sup>

Already a year later, a volte-face has taken place: not only does he lose no Not only does he forget the good words he had found for the tiers at the moment of the brief unification of the Estancels against the Crown, but also and above all he now presents the function of the monarchy in an essentially different way. Whereas in 1788 he approved of the separation of powers with the aim of reserving the decisive legislative power to the Estates General and leaving only the executive power to the King, he no longer wants to know anything about 1789 this same separation of powers and to endow the King also with legislative functions or with a right of veto against the legislature; moreover, he now sees the divine right in a more favorable light and is inclined to regard the ancien regime as a "monarchy".

<sup>138</sup> See above Ch. II, Sect. 5.

<sup>139</sup> Letter to a Member of the Nat. Ass., Works, IV, 50.

<sup>140</sup> Letters on a Regicide Peace, IV = Works, VI, 33.

<sup>141</sup> Letter to R. Burke, Jr. dated = 26.9.1791 Corresp. VI, 413.

<sup>142</sup> For a brief description of him, see Beik, French Revol., 20, 54.

<sup>143</sup> The influence of Fenelon is also significant, see Riemer, Staatsanschauung, 89 ff. For information on the influence of Boulainvilliers, see the writings cited in the next note.

<sup>144</sup> Riemer, op. cit. 30--62; 0., Beik, French Revol., 11-13; Godechot, Contre-Revolution, 12-14.

<sup>135</sup> Memoires, I, 403.

<sup>136</sup> Ancillon, Ober den Geist, 88 f Burke makes similar remarks in his letter to Rivarol of 1. 6. 1791 = Corresp., VI, 268. Cf. the sentence of abbe Maury quoted by Aulard, Orateurs, 256.

<sup>137</sup> Phil. of Law, I, 560.

whole to protect<sup>145</sup>. He was not alone in this. For in the mea culpa mood that spread after the successive catastrophes, especially in emigration circles, not only a romantic idealization of the monarchical institution as a guarantor of order and hierarchy flourished, but also a glorification of the executed royal couple that contrasted with<sup>146</sup> the detached judgments of many nobles before 1789 about Louis XVI's intellectual infirmity and Marie-Antoinette's frivolity.

Despite all the psychologically obvious and propagandistically necessary idealization of the ancien régime and the monarchy, the nobility after 1789 by no means envisioned an absolutist regime, but rather a status-based one, bound to the lois fondamentales and controlled by the aristocracy—in short, a traditional one.

and traditionalist, not a sovereign confederacy before<sup>147</sup> Burke's call for of a solid monarchy was accompanied <by the explanation that he meant "a monarchy directed by laws, controlled and balanced by the great hereditary wealth and hereditary dignity", as well as <by a rejection of the "old fanatics of single arbitrary power" or the "old prerogative enthusiasts" who believed in the special divine sanction of the monarchical form of government; by countering this belief with the pactum subiectionis, Burke reconnected with the scholastic and statusist tradition<sup>148</sup>. The same was done by abbe Barruel, who also advocated a strengthening of the monarchy as a bulwark against the revolution, but at the same time adhered to the scholastic theory of the divinity of the governmental power as such in contrast to the constitutional character of the form of government, repeated the old distinction between king and tyrant, and demanded<sup>149</sup> the binding of the crown to the lois fondamentales. Rivarol paraphrased the same facts in secular language when he called the<sup>150</sup> monarchy "un resserrement de l'aristocratie". All these statements about the origin and nature of the monarchy manifested the hope and desire that victory over the revolution would mean a return not to absolutism but to the (somewhat transformed) *societas civilis* as the only social structure truly immune to revolutionary subversion. The insistence on speaking of the king in the Aristotelian-scholastic and Germanic language of the Estates reflected the conviction that the *societas civilis* belonged

<sup>145</sup> Riemer, op. cit. cit. 106, 113 ff; Beik, op. cit. cit. f.18, 50.

<sup>146</sup> Baldensperger, Le mouvement, II, 49ff., 116f.; Aulard, O rateurs, f191..

<sup>147</sup> Cf. Beik, French Rev, 111.

<sup>148</sup> Reflections, Works, III, 395, 265, 267. Let us remember that this two-sided attitude toward the monarchy had its precedents in eighteenth-century England as well. When Bolingbroke called for his ideal Patriot King, he was at the same time setting forth the traditional scholastic theorem of governmental power as distinct from the form of government, see Works, III, 47f., cf. 65f., p. 1.

<sup>149</sup> Godechot, Contre-Revolution, 48-50; Beik, French Revol. , 21,47.

<sup>150</sup> For this purpose, Barth, Idee, f90.

is not irrevocably a thing of the past. The view that the whole state is embodied in and by the monarch is not a concession to absolutism, but only says that the state is not understood as one part of the community, which is opposed to the other part of it, namely society; thus, if the modern separation of state and society does not exist at all, the monarch can symbolically stand only for one indivisible whole. Equally traditional (meant) are the other predicates attributed to the king. Thus, his divine grace must not be an "earthly title" or a "cloak" "under which he should hide absolutist tendencies and spirits", but a "gentle, humble expression of dependence on the King of all kings"<sup>151</sup>. It remains

also with the medieval notion that the king was not legislator commemorative

Against the background of this unbroken continuation of the legal conception of the *societas civilis* in<sup>152</sup> its implications for the monarchy, the use of standish arguments in every important dispute between the nobility and the king, even after 1789, can be explained, as was often the case in Prussia, for example. Most of the nobles did not feel that they were harming the counter-revolutionary cause by making similar demands. When Marwitz referred to<sup>153</sup> contracts and insurance, he could point out that in view of the revolutionary danger not only the nobility needed the king, but also the king needed the nobility. If the king, the "noblest of the propertied classes,"<sup>154</sup> stood alone before a mass of the people, his position would be

cannot be maintained in the long term: "a middle class [= pouvoir intermédiaire] is therefore

necessary to divide the mass of the people and to observe them"; but in order to perform this function, the nobility would need its full prerogatives.<sup>155</sup>

Thus, to the extent that for the conservatives the revolution was the outlet and the

<sup>151</sup> Grundztige, 7. Cf. Bo!ald, Observations ... Oeuvres, VII,657; Jarcke, Verm. Schriften, I, 152; Haller, Restauration, II, ff.64

<sup>152</sup> Schlegel, Die Entwicklung der Philosophie (Köln: Vries. 1804/5), XI = Werke, XIII, 160. also according to Bonald, the state power, has deux fonctions éminentes: juger et combattre", Demonstration philosophique, VII = Oeuvres, VII, 62-66. -Ober die Bindung der Monarchie an die lois fondamentales und die lois religieux s. Theorie du Pouvoir, I, 1, 8 = Oeuvres, III, 91f.

<sup>153</sup> II,170 , 1,153,156,168,ff172,178,230,288. , 345;318,319, II, 54;2,37, cf. Steffens, Hardenberg, 26.13,

<sup>154</sup> I, 671.

<sup>155</sup> -On the Necessity of a Middle Class in a Monarchy (Dec. 1810) = II, 1, 198. Noteworthy in its stand-up sincerity is a much more friier passage of Mi:iser: "The king is really the primus familiarum of the landowners, and not of all the people assembled in a state; and his duty is to keep the multitude in such order as to set the landowners safe, that the people do them no wrong" (Works, IX, 258f).

As the only drastic anti-revolutionary antidote, they logically considered the preservation of pre-state freedoms - and, if possible, the return to the pre-state state - as the completion of modern sovereign statehood. It is well known in what extreme form Haller imagined this return, who understood his restoration literally, namely as restoration of the "pure patrimonial state",<sup>156</sup> and even considered the word "government" to be "sernirevolu tionary",<sup>157</sup> since it suggested to the fiefdoms the fatal idea that they must "govern all possible things and private affairs. On the other hand, it cannot be denied that, for all the theoretical sympathy of many conservatives for Hailer's basic concept, only very few were able to follow him when it came to dealing with the existing political tasks. The practical necessity of a militant unification of the nobility around the crown left little room for standish dualism (let alone the dissolution of the commonwealth into private individuals or oikos leaders), so that it was natural to see<sup>158</sup> in Haller's concept "more a theoretical show than a real political goal. How much times had changed after 1789 can be seen in Haller's own statements, which at least indirectly take into account the new need for strengthening the power of the king by rejecting the right of resistance,<sup>9</sup> But even conservatives, whose thinking was originally influenced by Haller, soon had to disassociate themselves from his political concept.<sup>15</sup> Radowitz, for example, who otherwise never ceased to think about constitutions

<sup>156</sup> Restoration, II, ff.372

<sup>157</sup> A. a. O., I, 478 f Hailer's proposals for limiting the number of civil servants, for thriftiness in corporate spending, for abolishing the "state" as a whole, as well as for the "state" as a whole, were intended to dismantle modern statehood.

The former first right of taxation, etc., has been abolished. (a. a.O., III, 16 ff, 65 ff; II, 318 ff.). Moser (Patr. Phantasien, I, 54 = Werke, IV, f266; cf. IX, 266-268, 304) and the Romantics had preceded in the clarification of the pre-state condition. Above Novalis' glorification

For the licheness of the patriarchal conception of monarchy and its metaphysical preconditions, see Meinecke's fine analysis, Weltbürgertum, ff;62 also Fr.

In the early conservative years, the "return to the old" and the "constitution of the Middle Ages" were described as the "task of politics" (Vorl. über Uruversalgesch., IV, § =10 Werke, XIV, 256;254, cf. already the fragments from the year 1803 = Works, XVIII, 492). Above

Baldensperger, Le mouvement, II, 152 ff. informs about analogous approaches in the circles of the French Errugration. As is well known, politically relevant conservative circles expressed strong reservations about such tendencies, see typically Ancillon, Vermittlung, esp. 50 ff, cf. Stahl, Rechtsphil.

(Obras, II, 764) - which was by no means accidental: the more activist or concretely political the reaction against the revolution was presented, the more clearly the unsuitability of the call for a return to the past for fighting the enemy of the past was recognized, see below.

<sup>158</sup> So steel, parties, 327.

<sup>195</sup> Restoration, II, ff450; III, 435ff, ff374. Cf. v. Sonntag, Staatsauff, ff.93

The main defect of absolutism was that it wanted to achieve order at the expense of freedom, so, conversely, the status quo, which allowed itself too much freedom, lacked order; "historically, legally and expediently, every monarchy<sup>160</sup> is rooted in the patrimonial principle. Historically, legally and expediently, every monarchy is rooted in the patrimonial principle. But the root is not the tree". This was not understood by those who "looked back to earlier times" and denied the<sup>16</sup> necessity of development in the sense of a "constituent monarchy. "1 In the search for the theoretically relieving and practically extinguishing golden mean, conservatives developed the formula that they wanted neither a despotic (as in Turkey) nor an elective monarchy (as in Poland), since both were<sup>162</sup> equally unstable. The conservative renunciation of elective monarchy was, of course, already old, but now further modifications of scholastic-state theory were added; thus the old topos, which could now be reinterpreted in revolutionary terms, that the king was there for the sake of the people, was extended to the effect that king and people were equally dependent on each other and inseparable<sup>163</sup> from each other. The status element therefore had to be theoretically and practically eliminated or suppressed - at least partially and at least at certain times and in certain places. Someone who, like Br: „A state based on the organic division of the stangle, and therefore also on the separation of the stangle, can only be held together by monarchical power<sup>164</sup>. The demise of the feudal system and the old-state monarchy was finally celebrated as "progress" by those conservatives who believed that their own cause could best be<sup>165</sup> served under the given circumstances by a non-liberal form of constitutionalism.

The described ambivalence of the conservative attitude toward the monarchy after 1789 offered a comfortable freedom of movement in the realm of theory, which, however, could rather complicate than facilitate the practical option under the pressure of a concrete situation. This embarrassment, which runs through the entire conservative camp, can also be seen, due to its typical character, in narrower conser-

<sup>160</sup> Fragmente, I = Ausg. Schriften, II, 285.

<sup>161</sup> A. a. fO., 382, 301f, 375.

<sup>162</sup> Bon ald, Demonstr. philos., XI = Oeuvres, VIII, Cf79.. Cortes' polemic against the extremes of monarquia feudal and monarquía absoluta, Obras, II, 769.

<sup>163</sup> For example, Maistre, Du Pape, II, = 1Oeuvres, Sp. Against the327. Elective Monarchy II, =9 Sp. 368.

<sup>164</sup> Fragmente (1820) = Werke, XXII, This 21. corresponded to Metternich's inclination, with all the traditional assessment of the monarchy's prerogatives temperee to assign only auxiliary functions to the stands, see Srbik, Metterruch, I, 370, 376 ff.

<sup>165</sup> Stahl, Parteien, cf327.. section Sa of this chapter.



vative milieus and not infrequently also among individual conservatives. The Gerlach circle offers a particularly vivid example of this. They were dominated by a feeling that Leopold v. Gerlach expressed as follows: A terrible situation, between revolution and absolutism, according to a very appropriate street-boy expression here, to be dumbed down.<sup>166</sup> His brother Ludwig, who had been influenced by Haller from early on, wanted to escape this situation by the revival of the standard monarchy, which was supposed to finish off revolution and absolutism in one fell swoop. In terms of its intellectual content, this concept was hardly original, but its significance lies in the time of its formulation, for it constitutes one of the last consistent affirmations of the pre-state conception of law: its very failure thus testifies to the fact that conservative consistency, i.e. conservative politics of pure water, was no longer possible and that conservatism as a historical phenomenon was at an end. Ludwig v. Gerlach does not stick to his usual condemnation of the revolutionary aspect of absolutism as "constituting on tabula rasa."<sup>167</sup> but he combines it - as well as his rejection of the absolutist version of the divine right - with an emphasis on the similarity of royal and civil rights<sup>168</sup> that already sounded strange around the middle of the nineteenth century; in his favorite saying: I am also a king" celebrates the last appearance of an ancient consciousness that can no longer or no longer wants to find its way in the present world. However, Leopold's objections to the aforementioned saying show that the nobility (! fear) was no longer capable of making such demands on the crown. Although Leopold shared his brother's aversion to despotism and also held the rights of the nobility in high<sup>169</sup> esteem, the

However, he does not want to understand "I am also a king" as a questioning of the royal *dei gratia*, but simply as "confirmation of the divine right that one has as a Christian, a father, a human being"<sup>170</sup>; moreover, he can hardly imagine the monarchy in its detachment from the person of the monarch, whom the service is meant for, and he therefore has to put up with<sup>171</sup> the reproach of "servilism" on the part of his brother. At a time when any talk of the original rights of the people could be reinterpreted in a revolutionary sense, Leopold felt mistrust in the notion that "the people as such can be a subject of law, can possess freedoms," and argued that "the unity of the people" was a "right of the people". essentially inorganic and disparate, until it finds its unity in the king [sic].

<sup>166</sup> Denkwiirdigkeiten, I, 588.

<sup>167</sup> NachlaB, I, Cf304.. above note 16, 32.23.

<sup>168</sup> See the account by Martin, *Autoritat*, 173( The same motifs are summarized very characteristically in an essay by v. Thadden-Trieglaff from 1848, see the text in Mommsen (ed.), *Parteiprogramme*, 36(

<sup>169</sup> E. L. v. Gerlach, *NachlaB* 3, II, 622(

<sup>170</sup> A. a. O., 745.

<sup>171</sup> L. v. Gerlach, *Denkwiirdigkeiten*, I, 745; Meinecke, *Tagebiicher*, 74f.

has found"<sup>172</sup>. Leopold's following general assessment of the socio-political situation revealed what this commitment to the monarchy might mean in concrete terms: "In the case of officer despotism, there is only protection for the king and the estates. If the latter fall, the former alone remains iibrig".<sup>173</sup> Here, the expectation is expressed that the king would fulfill conservative tasks that the standing forces, because of their admitted powerlessness, were no longer able to accomplish on their own. However, it is not explained in detail how the royalty could oppose the officials in any other way than through officials, and in this respect Leopold, for all his realistic assessment of the official forces, remains floating in the political air. On the other hand, other conservatives combined their monarchical convictions with a "governmental" or (in the language of Ludwig v. Gerlach) "absolutist" attitude, since they realized in time that the nobility needed not only the monarchy, but also a solid state apparatus, in order to be able to <lessen Spitze stood the Konigtum. Thus Leo considers 1864 as the first duty of the Conservatives the "loyalty to a kingdom based on the civil service and the army". The preservation of the *suum cuique* in the constitutional sense is not seen here as a goal to be enforced and enforceable under all circumstances, but rather formulated as a plea addressed to the Christian conscience and the tradition-consciousness of the monarch."<sup>174</sup> The division of the conservative party into an absolutist one and one that wants to make the king dependent on conservative chambers"<sup>175</sup> was unavoidable because of the differences of opinion described above, and the practical assertion of governmental conservatism over standish conservatism was<sup>176</sup> equally unavoidable.

Not only the general socio-political constellation after forced 1789 the The French Restoration in particular showed its strength through the charters granted to it. The urge for constitutionalization could not be stopped ad infinitum, and the restoration in France in particular showed its strength by the charters it was granted. Thus, finally, the (more insightful) conservatives had no choice but to intercept this urge by non-liberal or anti-liberal constitutions; the position of the king in them was to block the way to popular sovereignty even more effectively. Such constitutional designs already date from the first phase of the French Revolution and are strongly oriented toward the English constitutional fiction, such as that of the French Revolution.

in A. a. O., 596.

<sup>173</sup> E. L. v. Gerlach, *NachlaB*, I, 695.

<sup>174</sup> What is conservative? = Nominal. Thought span, 59f

<sup>175</sup> Thus E. L. v. Gerlach *Aufzeichnungen* 1852., II, 147.

<sup>176</sup> See the brief description of the Prussian processes since the time of the Reaction and the New Ara in Schiiddekopf, *Innenpolitik*, 44-67.

was popularized by de Lolme. As de Lolme argued, the power of the English king was real and even greater than that of the French king, because he led the executive and also shared the legislative power with Parliament<sup>177</sup>. The French conservatives based their constitutional proposals after 1789 on this scheme. We have already mentioned how d'Antraignes envisioned the strong monarchy after his change of mind. Cazales, who praised the cooperation of king, lords and commons in the English constitution, also wanted to give the king, whose power in his opinion was based on more original rights than those of the National Assembly, not only the leadership of the executive, but also a substantial participation in the legislature in the form of the right of veto.

The aim was to protect the "people" from the despotism of the National Assembly<sup>178</sup>. Mallet du Pan<sup>179</sup> and Montlosier<sup>180</sup> proposed something similar with a similar

The continuity of this motif in conservative constitutional thinking was evident in the debates of the Restoration period. The continuity of this motif in conservative constitutional thought was evident in the debates of the Restoration period. Montlosier returned to his earlier proposals and justified his view that the king should exercise his legislative function not through the right of proposal, but only through the (absolute) right of veto, by pointing to the dangers of permanent interference by the crown in party disputes.

He is justified because the right to death comes from<sup>181</sup> the king. Niche Chateaubriand<sup>182</sup> thought differently at the time. The assumption of the king as the source of the

Law could be reconciled in a vague way with the conception of law of the *societas civilis*, but it nevertheless displayed a new activism, which became unavoidable since the more or less intense legislative practice within the framework of constitutionalism was daily paying lip service to the old belief in the impracticality of law. In this new situation, the king can no longer be a mere "judge" in the traditional sense, for law is no longer merely subject to interpretation in its fundamental immobility, but is made before all eyes by concrete people, at whose head the king now stands.

<sup>177</sup> Constitution of England, T. II, ch. 1-3, 17 = p. 188ff., 353ff. As is well known, this interpretation of the English constitution was aided in France during the first revolutionary period by a certain interpretation of Montesquieu's statements on the subject.

<sup>178</sup> Beik, French Revel., 27; Aulard, Orateurs, f275.

<sup>179</sup> Memoires, I, 186-188.

<sup>180</sup> Beik, French Revel., 35.

<sup>181</sup> Monarchy, IV, f24.

<sup>182</sup> De la Monarchie selon la Charte, I, 4-12 = Oeuvres, XII, ff8. On the constitutional For the historical background of these ideas of Montlosier and Chateaubriand, see. Meisner, Monarch. Principle, 32ff. It should be added here that Montlosier - and to some extent also Chateaubriand - did not share the view of a strong English monarchy. However, this did not change the practical result, because even those who believed such things only wanted to substantiate their previous decision to strengthen the crown in order to achieve their own goals.

This new activist tone is also evident in Stahl's constitutional plans, which are actually an adaptation of the basic scheme described above to Prussian conditions. Stahl shared the original conservative aversion to the separation of powers, whose goal was the subjugation of the executive (the king) to the legislature (the people's representatives), and accordingly he wished for a drastic royal influence on the legislature in the form of a "constitution".

of a "definitive," not merely suspensive, right of veto<sup>183</sup>. In doing so, he makes the The old anti-absolutist topoi and the denial of the principle of legitimacy.

The author of the study, however, <sup>184</sup>does not want the restriction of this power to be in the sense of the "unconstrained royal power", but on the other hand he does not want the restriction of this power to be in the sense of the "unconstrained royal power".

In a constitutional monarchy, the power of the people's representation is opposed to the king "in all spheres", but this is precisely what shows that royal power extends to all areas, since it can destroy the power of the people's representation through its absolute veto power "in all spheres", and it is not possible for the king to exercise his power "in all spheres".

The "Minderzahl"<sup>185</sup> (number of nobles) is able to give protection against the "Mehrzahl" (majority). Thus

The "monarchical principle" is defined, which obviously means a strengthening of royal power compared to the traditionally understood "sovereignty" <sup>186</sup>. The monarch represents and personifies the state, as a ruler's will he is "present and effective in the entire area of the state, his innermost personhood" and not his servant, he "unites in himself the various branches of violence"<sup>187</sup>. With regard to the danger of "despotism", Stahl claims at the same time that "for the sake of the same identification with the state".

The power of the Prince shall be exercised in accordance with the principles of the State.

The good ruler <sup>188</sup>is not the ruler above the state, but the ruler within the state. We do not want to examine here whether steel is thereby the

It is not clear whether this theory paves the way for the state as a legal person or whether the state is basically only the embodiment of the traditional idea of rights. It remains unclear what all this means in concrete political terms, i.e. how the new active role of the Crown in all areas of state life should be reconciled with the preservation of traditional rights, since no institutional safeguarding of these rights is envisaged. The First should ask for the will of the Stancle, but it should not follow the same, the rights of the Stancle, to whom only the will of the Stancle is guaranteed.

moral effect" are not autonomous, but are included in the

<sup>183</sup> Parties, ff.114

<sup>184</sup> A. a. 0.,301.

<sup>185</sup> Revel. a. const. Monarchic, 76.

<sup>186</sup> This is already evident from Stahl's statement that in England the sovereignty of the king

exists, but not the monarchical principle (Mon. Princip, 12).

<sup>187</sup> Jur. phil., II, f2.,190, f.239,242

tss A. a. O.,240, 258.

The nobility had to accept the protection of the princely authority, and only in this way could they be truly protected<sup>189</sup>. This was really the last and the best thing that the nobility could offer to the monarchy in exchange for the "protection of the minority against the majority". In his historical pusillanimity, he renounced the traditional institutional guarantees against absolutism in order to secure the active help of the monarchy against the revolution. Nevertheless, Stahl's position was not at all that of the whole nobility. The aforementioned renunciation was made neither by the whole nobility nor wholeheartedly - and to the extent that it was made, it was again in vain.

#### *d. Reaction and dictatorship*

The problem of reaction and dictatorship in the thought and work of counter-revolutionary conservatism can only be understood<sup>190</sup> against the background of the old ambivalence in the relationship of the nobility to the modern state: The nobility remained socially and ideologically anchored in the *societas civilis*, but at the same time, because of its social superiority, it had to demand and occupy most and most important positions within the just emerging state apparatus, so that, precisely by submitting to the state, it could influence, undermine, or conquer the state in the interest of the *societas civilis*. This ambivalence increased in intensity after 1789 because the *societas civilis* was threatened as never before and, consequently, as never before was recognized and clarified as a structure and way of life by its supporters and defenders who were sensitized in the hour of danger, while at the same time the state had to be called upon as never before to defend the *societas civilis*. The nobility and conservatism tried to overcome this antinomy by playing off the more mature and milder form of modern sovereignty and statehood, namely absolutism, against the later and more radical one, namely the revolution. In doing so, absolutism, under the influence of its counter-revolutionary bias with the nobility, was to be relegated, as it were, to the status of patriarchal monarchy, but at the same time it was to make full use of the instruments it had just created in the struggle against the *societas civilis* to defend this same *societas*, or noble social rule, against the revolution. The fundamental stance toward the monarchy with the simultaneous desire to activate the monarchy as much as possible against the revolution makes it possible to understand what a conservative like the early Bismarck meant when he wrote to Leop. v. Gerlach that he was an absolutist only in the case of insurrection<sup>191</sup>; the democratic mockery verse: "And the King absolute./When he's our

<sup>189</sup> Mon. Princip, 16, 21, 32.  
<sup>190</sup> o. ch. II, para. 3a. <sup>191</sup>  
 Cited by Saile, Wagener, 37.

In this respect, the position of the nobility was very apt. The desire to put the originally absolutist and thus "revolutionary" state apparatus at the service of conservative objectives, in view of its greater efficiency, was not initially without notable success, as for example the function of the "state".

Josephinism<sup>192</sup>, 1792 in a historical perspective

it had to amount to an effort to square the circle. For basically it was a matter of the desire to save the allegedly "organic" <by sovereign power and determined action according to plan> - even (in view of the dissolution of the *societas civilis*, which in the meantime had in fact taken place) to reconstitute it or even to create it on a "healthy" basis.

The final speech was praised<sup>193</sup> by friend and foe alike. The final

The result, after all, was not the resurrection of the *societas civilis* and the revitalization of the nobility, but on the contrary <lessen's growing dependence on an inexorably growing state; thus Lagarde could not 1853 have been wrong in noting that the state was growing at the same time as the nobility.

ken: This nobility without style in the government would vanish like March snow, because he does not have a pride in his own value"<sup>194</sup>. To the extent that the nobility tried to harness the state for itself, it is the heterogony of purposes.

Everything he did turned out to be different from what he had imagined, and it finally turned against its own author.

In the anti-absolutist struggle, conservative activism appeared as the exercise of the right of resistance <by noble frondeurs>; in the struggle against revolution, it takes the form of reaction and dictatorship. In the former case, the *societas* was still largely intact and the conservative action gait to the danger from above.

<sup>192</sup> Valjavec, Josephinism, 99.

<sup>193</sup> For example, Gentz wrote to Müller on 8. 7.1816 (correspondence, 222): „But Munizipalver Is that easier, is that more correct according to your principles and those of your friends today, than making constitutions? Campe admitted that "the partly complete overthrow, or at least the complete obscuration, of the old state relations" would make "octroying a political necessity under certain circumstances"; for his part, he was prepared to endorse the "right of state necessity," which "must be used for the common good if the legal forms are not sufficient" (Landstande, 254f, 6). And Rochau ironically stated: „It always remains a strange phenomenon, however, that the party which perpetuates the historical law, the organic structure, the natural life of the state, which from the standpoint of the good old days believes that it cannot condemn legislature, birocratic regimentation and mechanical government harshly enough, that this party, in the most blatant contradiction with all those slogans, demands that the people, by virtue of law, be again nested in a system of status from which it has outgrown itself through historical development. ... The 'organic division' of society is to be worked out at the table and octroyed from the state chancellery History is either to be as the 'historical school' wants it to be or it is not to be" (Grundsätze, 96(0).

<sup>194</sup> Deutsche Schriften (<sup>5</sup>1920), 31.



In the latter case, on the contrary, the danger came from below, and the meanwhile considerably weakened *societas civilis* or noble social rule sought support from the monarchy, which was equipped with the means of modern statehood and was also in danger. The prerequisite for a policy of reaction and dictatorship was, in other words, the described change in noble attitudes toward the crown after 1789; reaction and dictatorship became possible when the monarch at the head of the state apparatus sided with the nobility<sup>195</sup>; a dictatorship of the nobility over absolutism on a pre-state basis could not be conceived, but a dictatorship over the revolution serving noble interests and based on the existing absolutist foundation could. From this point of view, reaction and dictatorship were the natural aims or behaviors of conservatism in a certain historical situation in which it had to fight with its back against the wall, and there is no reason to separate the "essence" of conservatism from such aims or behaviors in order to preserve it, as it were, unsullied and intact; As we have already argued<sup>196</sup>, the juxtaposition of conservatism and activism is a polemically and ideologically conditioned topos of conservative self-understanding that can by no means be taken at face value. Reaction and dictatorship, in other words, do not represent independent entities alongside a likewise hypostatized conservatism, but they are political techniques or techniques of governance<sup>197</sup> which conservative forces - which, for their part, can only define themselves on the basis of concrete social bearers and concrete social goals, not their political methods - have made use of or at least wanted to make use of under certain circumstances. The fact is that the conservatives were not able to establish a real "dictatorship of the sabre", as Donoso Cortes had swarmed about, not because this idea was completely alien to them as a whole, but only because the inner contradictoriness of their politics, due to the ambivalence of their relationship to the state, made them incapable of doing so, as their lamentable failure in France in 1830 proved. Thus, *nolentes volentes*, they left it at various forms of authoritarian government, which were called "reactionary".

Under the pressure of the concrete situation in which the nobility found itself after 1789, the urge to activism could hardly fail to appear, however much this had to be deplored on the part of some conservative ideologues, who often did not have a political

responsibility and therefore had more courage to reflect on the discrepancy between organizer theory and voluntarist politics. Schlegel deplored this discrepancy as well as the activist tendency of conservatives bordering on the revolutionary with the following remarkable words: ...One reason of... great evil lies in the strange character of our time, that now everything immediately becomes a party, that even the good and right in attitude and way of thinking is so often seized and dominated by this unrestrained ultra spirit, whose unconditional nature and inorganic activity can by its nature easily fall into the destructive, and thus cooperate with its enemy, the revolutionary way of thinking, to the same end and chaotic end, against its intention.<sup>198</sup> It was also deplored that the "fear of democracy", driven to the point of madness, motivated the fourth course of action of politically responsible conservatives, who were not guided by any moral considerations, but had "sacrificed everything", "honor, justice and reason"<sup>199</sup>, in the struggle against "the red spectre". Whoever wished to substantiate this statement by looking at the still recent past had no lack of a rich selection of examples. He could begin with the activities of the Centre Revolution, which ranged from paid espionage to the merciless Terreur Blanche, mention<sup>200</sup> the rabble-rousing and assassinations (not to mention the repressive legislation) in restorative France, and also recall many a German nobleman who tried to incite workers to armed insurrection with money etc. in 1848.<sup>202</sup> This practice corresponded in the theoretical sphere to the flimsy but nevertheless characteristic attempts to legitimize the use of force politically and historically, despite all the glorification of "organic development," etc. The idea that the law is not a matter of the law, but a matter of the law is a matter of the law, is not a matter of the law. Jarcke (who, by the way, was not a particularly "reactionary" conservative) countered the argument that since law develops organically, it must return to its natural, i.e. pre-revolutionary, state: "In itself, the doctrine of the historical origin and formation of law is undoubtedly correct, but it, like any other one-sided, abstract theory (!), can be ... can be used, either with malicious intent or out of learned modesty, as a tool which serves the purposes of the revolution by crippling the most effective resistance to it"<sup>203</sup>. And Leo justified the action of the authorities in the Koerner events by a general relativization of the

<sup>195</sup> This was quite conscious in the 19th century, see the evidence in Kondylis, *Reaktion-Restauration*, ff.213

<sup>196</sup> Ch. I, sect. 1.

<sup>197</sup> Valjavec calls reaction a "technique of governing" (*Entst. d. eur. Kons.*, 146).

<sup>198</sup> *Signature of the Age*, I = Works, VII, 492. Cf. XXII, 50: "The Ultras have assumed an entirely revolutionary character in France.

<sup>199</sup> Thus Radowitz in a letter to his wife from Nachgel. 24.10.1852, Letters, 405.

<sup>200</sup> See the very informative part of 2. Godechot's *Contre-Revolution*.

<sup>201</sup> Resnick, *White Terror*, esp. f9., 53, 75 et seq.

<sup>202</sup> For details, see Jord an, *Entstehung*, 287 et seq.

<sup>203</sup> *Verm. writings*, III, 543f.

We should never deny the blessing of an organically formed people's life; but where such a thing becomes impossible in any way, and the nature of time and circumstances demands a mechanical behavior, we should never deny the blessing of an organically formed people's life: „We should never fail to recognize the blessing of an organically formed life of the people; but where such a life becomes impossible in any way, and the nature of time and circumstances demand mechanical behavior, we should blame it only in so far as the arrogance and willfulness of man make it necessary; but we should recognize the power and strength which a community is capable of proving in the production and formation of such mechanical forms of life. The capacity for this mechanical behavior, where it is at all necessary, is to a certain extent the bones of the people, ...and thus a people which, where circumstances demand mechanical treatment, is not able to respond adequately to this demand, is half stillborn.<sup>204</sup>

The resort to "mechanical", i.e. to organized violence, could, however, be justified without such an open relativization of the organic principle, and could even be presented as its defense. This very useful casuistic flexibility was offered by the mere formality, i.e. the non-binding nature of the content of the said principle. For the decision as to when the "organic" development demands a change and when a change must be classified as a violation of the organic character of the development is a question of interpretation, i.e. of power. In any case, conservatives have always interpreted the organic principle in terms of their preferred political tactics and have usually invoked it when an abrupt change had disadvantages for them, while denying the necessity of "organic development" here and now as long as they were firmly in the saddle. Thus Burke, who in 1790 post festum deplored the failure of organic development in France<sup>205</sup>, in 1782 opposed a peaceful and by no means revolutionary expansion of the social groups represented in Parliament with the same basic arguments that he later used against the Revolution itself: the Constitution had existed "times out of mind", the nation was "an idea of continuity", the wise was the species and not the individual, etc<sup>206</sup>, etc.. In order to block the way to reform, Burke claims that *this* reform, of all things, strikes at the very<sup>207</sup> substance of the Constitution, and thus he turns the concrete political issue into a question of principle where no concessions are allowed. Significantly, he rejects the reform proposals not because he denies their authorized character, but because he immediately thinks of the ultimate consequences of a process of change once it has been set in motion; with this reasoning, of course, any proposal for change can be rejected out of hand.

den. From the secure basis of his tautological circular thinking, even Burke can reproach the reformers precisely for their malice and ask them - somewhat rabulistically - why they wanted to keep their reforms within limits if they believed<sup>208</sup> in their fundamental correctness.

From the analysis of this example it becomes clear that the Conservatives' rationalization. In other cases, similar rationalization mechanisms could be used to justify actions that were at least very close to a breach of principle. Thus, conservatives occasionally supported administrative centralization or even universal suffrage<sup>209</sup>, but their handling of the principle of legitimacy is particularly instructive, showing most clearly their willingness to judge political actions in extremis without any other consideration than the naked interest. It is well known what Gentz thought of the principle of legitimacy at a time when he opposed the restoration of the Bourbons for reasons of state reason: „However sacred it may be," he wrote, "it is born in time, must therefore not be conceived absolutely, but only in time, and *must be* modified by time, like everything human.<sup>210</sup> Now Gentz was not, or not always, one of the enthusiastic proponents of principle, and therefore perhaps this statement could be regarded as a mere expression of his per siinally cool political mind. The same, however, cannot be said of Leopold v. Gerlach, who defended the principle of legitimacy so fiercely in his famous correspondence with Bismarck. A few days before he discovered that Louis-Napoleon was an illegitimate ruler or a ruler legitimized by democracy, he wrote that if Napoleon fought the Reds, he would be "not entirely without legal title," and then added somewhat melancholically: "This service of God with the first birth and with the first right"<sup>211</sup>. Here, it is stated in no uncertain terms that violence and dictatorship are legitimized and have a legitimizing effect if they only serve the good cause. Donoso Cortes agreed with this at about the same time, saying that in the dictatorship, "en ciertas circunstancias. . . un gobierno legitimo" and called for<sup>212</sup> the elimination of legality in the name of greater legitimacy-although the principle of legitimacy remains, in the eyes of the conservatives, the same as the God-given principle of legitimacy.

<sup>208</sup> A. a. 100.0.,

<sup>209</sup> On such positions among the French Ultras, for example, see Resnick, *White Terror*, 39 (; Godechot, *Contre-Revolution*, 29 (, 39, 53 (; Oechslin, *Mouvement*, 181ff., 130ff.

<sup>210</sup> Thus in an undated letter written in response to a letter from A. Miiller dated 14 . 7. 1815 was written, *Briefwechsel*, 202( Cf. the letters to Metternich from 15. 2.1814 and 7. 14.1815 = *Letters*, III.,, 247,312.

<sup>211</sup> *Denkwürdigkeiten*, I, 703.

<sup>212</sup> *Discurso sobre la dictadura*, *Obras*, II, 306(

<sup>204</sup> *Epistle*, 20(

<sup>205</sup> *Reflections*, *Works*, III, ff.276

<sup>206</sup> *Works*, VII, 94-95.

<sup>207</sup> A. a. 0., 92.

This connection, however, concerns only the goals - neither the means nor the persons through which the goals are to be achieved<sup>213</sup>. Thus, the principle of legitimacy does not stand in the way of reaction and dictatorship any more than the organic idea, which has been reinterpreted or, rather, eliminated.

Conservatives initially spoke of "dictatorship" in the negative sense, that is, in the context of the practices of the revolutionaries in France and of Napoleon's subsequent rule. Without mentioning the word, Burke noted that the National Assembly, which was committed to the control of no power on

<sup>214</sup>The people, who wanted to subjugate the people on earth or in heaven, were not guided in their actions by the idea of normality, but by that of the extreme emergency.

Mallet du Pan captured the physiognomy of modern sovereign dictatorship no less clearly when he described in detail how the Comité de salut public exercised<sup>215</sup> "la dictature dans toute son étendue" <sup>5</sup>; later he called Napoleon "maître, dictateur et souverain de la France"<sup>216</sup>. It did not take long, however, before conservative voices were raised, reminding of the duty of the royal ruler, like a good father, to save his people even against their will, and terror, if necessary outside any legality, as the only suitable means of

The people were recommended to be chastised for having<sup>217</sup> lost their religion and morals. Such voices were heard more and more often, and they were called

The "absolutists" among the conservatives were not the only ones to voice these opinions, but they also came from circles that held patrimonial or statist views. As a commentator on the Spanish events of 1820, Haller recommended the adoption of a standpoint policy to overcome the constitutional crisis, and he also said that the "war" against the revolutionaries should be waged "with the spread of a better doctrine, with laws and institutions that rebuild what the sect has destroyed, and finally, of course, with force, if it has become necessary. As soon as the Sophists do not recognize your power and your laws, they have no right to be protected by either; if they treat you as enemies and observe neither law nor forms against you, treat them again as enemies; they have separated themselves from your people by their principles and their association, and do not deserve to remain in the social association which they insistently seek to destroy.

tion"<sup>218</sup>. Another conservative observer of the Spanish scene at that time was also convinced that a people that "begins to liege", "only with the force". which is also a truth"<sup>219</sup> can be governed.

Interesting and largely typical are the deliberations and fluctuations of the Gerlach circle on the question of royal counter-revolutionary dictatorship. When Ludwig v. Gerlach heard Wagener say in 1849 that the end justifies the means, if it is only the true end, he was shocked<sup>220</sup>, but only three years later, according to his own statements, he would be able to "make friends with dictatorship as an event, I saw a dictator"<sup>221</sup>. Already in the fall, 1848 he had written in a In his opinion, the use of "armed force" had not been ruled out in the government plan that had been drawn up<sup>222</sup>, and in view of the European revolutionary upheaval he said:

At all times, out of turmoil and war, there has arisen a saber rule and dictatorship 'from above or from below' - this is the center to which all questions of the time must be subordinated. Therefore, our sympathies are for Austria and against Ungarn, for Austria, Prussia and Russia against the Poles, - as much as we deplore the injustice suffered by Hungary and Poland ... In that hour of greatest danger dictatorship appeared not as a matter of principle, but as a question of political expediency, to be tackled as such without "organist" motives; and if dictatorship was considered undesirable, then again only on the basis of tactical considerations<sup>223</sup>. This can be inferred from an entry of Leopold v. Gerlach in his diary, which is otherwise characteristic of the mood of the body-and-soul fighting and hating conservative, who once wanted to clear the air by all possible means, including bloodbath: "The militaristic (reactionary) Ministry must should be avoided as far as possible. Only after the sovereign people have been cavaignac could do such a thing"<sup>224</sup>. Leopold uses the word "dictatorship" in connection with the king's plans to dissolve the deputies.

He also uses expressions like "military dictatorship", "dictatorship of the king" or "military despotism", of which he means 1849 the beginning: There is nothing else left for us"<sup>225</sup>. The effort to preserve the old

<sup>218</sup> Const. d. span. A few 84. pages earlier, however, we read that, in order to combat the In the case of the "godless sect," there was no need for "persecutions, executions, and banishments, except against proven criminals" (70). The ambivalence is striking.

<sup>219</sup> Spain, 186.

<sup>220</sup> Citation Saile, Wagener, 23. In the year 1863 Wagener Bismarck has a „conigliche Diktature" suggested: "Terrorism has a certain right here, since the people must first of all learn obedience again" (op. cit. 0., 139, 141, 143).

<sup>221</sup> NachlaB, I, 324; cf. Leopold v. Gerlach, Denkwürdigkeiten, I, (82) entry of 13. 11. 1852).

<sup>222</sup> Supplement, II, 591.

<sup>223</sup> Records, II, 41.

<sup>224</sup> Letter to Ludwig v. Gerlach from 20.7.1848 E. L. v. Gerlach, NachlaB, II, 551.

<sup>225</sup> Denkwürdigkeiten, II 172, 174., 259, 300.

<sup>213</sup> See, for example, Jarcke, Verm. Schriften, III, 115.

<sup>214</sup> Reflections, Works, 111, 290, 495; cf. 527: Everything depends on the army in such a government as yours etc. etc."

<sup>215</sup> Memoires, II, f2

<sup>216</sup> A. a. O., 428; cf. Gentz's reflections on the Napoleonic "dictatorship" in the letter to Bottiger of 17. 4. 1798, Letters, I, 251f

<sup>217</sup> So Barruel and 1791 Montlosier a little later, see Beik, French Revol., 47.

The most important thing now was the "preservation of royal power, even if it prepares the way for despotism," as well as the "preservation of property" and the "defense against communism"<sup>226</sup>; in an emergency, the "main principle" should be the "maintenance of the power of the king and the army," because "only soldiers can help against democrats: With these priorities, of course, as Leopold <sup>228</sup> ruefully admitted, "in the fight against absolutism, some things must be missed" <sup>227</sup>. "but if the rebellion continues or slumbers under a dark cover, it is difficult to assert freedom.

One aspect of central importance must now be emphasized: When conservatives want and demand dictatorship, they do not mean by it a permanent, firmly structured system of government, but a necessary and preliminary, though perhaps prolonged, recourse to organized military-political violence for the purpose of averting the threatening acute existential danger; and even the recourse meant in this way is not often approved<sup>229</sup> without hesitation and conditions insuring the risk. We will understand this hesitation - and at the same time the feeling of the conservatives that they would remain faithful to their principles even at the moment of their call for counter-revolutionary dictatorial violence - if we examine more closely their conception of the nature of dictatorship. In contrast to the revolutionary dictatorship, which comes on the scene with the claim to transform the structure of the polity, i.e. to make law sovereign, conservative dictatorship sees itself as the defense of existing historically sanctioned law. And since this dictatorship soils the sovereign making of law on the part of the revolution, it appears in the eyes of its conservative supporters eo ipso as a *Hiiterin* or even as a component of the "organically grown", which confirms the relieving impression that <by the affirmation of the dictatorship is not deviated from the highest world-view principles <hole. After all, the conservative dictatorship, at least in its intention and approach, is not one that wants to help a new *pouvoir constituant* to power or keep him in power, but an emergency government with a limited and specific mandate and corresponding powers.

and not a sovereign dictatorship, in order to give us the opportunity

<sup>226</sup> A. a. 0., 208.

<sup>227</sup> Letter to Ludwig v. Gerlach from =20.3.1849 E. L. v. Gerlach, Nachlall, II, 628.

<sup>228</sup> Letter to Ludwig v. Gerlach dated 16.8. 1860, a. 0, 1055.

<sup>229</sup> To stay with the latter examples: in the same government plan, where he advocates the use of armed force, E. L. v. Gerlach expresses his ideal of the monarchy in quite scathing terms: "Self-scandigkeic of the crown, within the bounds of its right, thus no absolutism" (Nachlall, II, 604). And his already martial brother rejects the 13. 8. 1850 Austria's domestic course, which wanted to "overcome constitutional despotism with Josephinian despotism" (Denkwürdigkeiten, I, 519).

The question now arises for the conservatives as to whether in the intensity of the foreign policy. For the conservatives, the big question now is whether, in the intensity of the extraordinary violent action, forces could be awakened or brought to life and chains of action set in motion. For the conservatives, the big question now is whether, in the intensity of the extraordinary violent action, forces could be awakened or brought into being, and chains of action set in motion, which would amount to such a great and irrevocable concentration and structural consolidation of state power that in the future the state power would no longer be able to proceed otherwise than sovereignly in the modern sense; then the original bearer of the counter-revolutionary action would finally, as a result of this action, itself have objectively become a revolutionary force. This fear was additionally nourished by the realization of the necessity of leaving the conduct of dictatorial action to the monarchy, which was based on the state bureaucracy and, precisely because of its objectively given relation to non-state forces, could<sup>230</sup> succumb to the absolutist temptation or enter into a casarist alliance with democracy. Long experience with absolutism, especially the still fresh memories of Josephinism, had taught the conservatives that formal dynastic legitimacy was not always and not necessarily immune to "revolutionary" sympathies. It was no wonder, then, that their attitude toward dictatorship was also significantly influenced by their assessment of absolutism.

In this perspective, it seems symptomatic that already in the first years of the French Revolution, Montlosier warned nobles who demanded the dictatorship of the king of the loss of their own freedom -<sup>231</sup> although, as we know, he himself was convinced of the inevitability of counter-revolutionary violence at that time. Dictatorship, then, could only be accepted when it was certain that it would be nothing more than "veritable monarchy": this is how Bonald describes the institution of the Rornish dictatorship, whose beneficial intervention in the turmoil of domestic political strife he praises. For him, that dictatorship was an, "institution eminent conservatrice," that is, it did not have the task of transforming the state, but simply of silencing rivalries and creating unity among the various centers of power in the state<sup>232</sup>. Its character as an "institution," however, ensured that it remained within fixed, namely institutional, boundaries.

<sup>230</sup> Conservatives, by the way, have always feared that administrative centralism and the predominance of the city (industry) over the countryside (agriculture), a kind of casarism (as it has existed so far due to the biocracy that has become too powerful), would lead to the creation of a new state of affairs.

The "police economy" therefore means to them as much as "Casarism or imperialism or Sabel regiment- in its primal beginnings. Thus Friedrich v. Gerlach

in a letter to Ludwig from =21.6.1863 E. L. v. Gerlach, Nachlall, II, This 1147. concern

The constant reminders to the ~~on~~ that its only reliable support was the nobility and not the biocracy, as well as the open statement of the "natural enmity" between the nobility and the biocracy - especially in a time when the biocracy could support not only absolutist but downright dictatorial governments.

<sup>231</sup> Beik, French Rev , 59.

<sup>232</sup> Des lois et des moeurs . . . , Oeuvres, VII, 556f.



The conservative desire to build emergency law into the constitution of a constitutional state, which was sometimes expressed, was rooted in concerns about the predictability of dictatorial action. The sometimes expressed conservative desire to incorporate<sup>233</sup> emergency law into the constitution of a constitutional state was rooted not least in the concern about the predictability of dictatorial action precisely because of its institutionalization and codification. And if one disregarded the danger of absolutism, one could see in the execution of the dictatorship by the crown an additional guarantee for the normal course of the whole procedure. For the monarch symbolically unites in himself all the rights, so if they are partially abrogated, they do not cease to exist for that reason, but simply return to their source, where they can remain until they can be returned to their individual holders. In this sense, the king is the natural dictator in a monarchy when an emergency arises<sup>234</sup>.

In Jarcke's detailed refutation of the radical concept of a conservative dictatorship, the fear of the possible (unintentional) transformation of a temporary commissarial dictatorship into a permanent and sovereign one is very clear, especially since his argumentation is based on the explicit juxtaposition of the traditional and the modern idea of sovereignty. Jarcke, who does not use the term "dictatorship" but speaks of<sup>235</sup> "coup d'état" or "coup d'état,"<sup>236</sup> admits that in certain cases a regent *must* override a liberal constitution, but on the other hand he is of the opinion that "we do not possess a generally valid right for cases of this kind, a formula which anyone could use without further ado in such matters. Dictatorship, therefore, cannot be a political panacea, and with regard to its implementation, there are no concrete instructions, but only general principles, which must be respected in any case, if the enterprise is to be brought to a happy end, if it is deemed necessary by the given situation. Jarcke now concentrates on these principles. He considers the radical concept of dictatorship to be revolutionary for two reasons: because it seeks to legitimize dictatorship by invoking the common good, and because, by approving the abolition of existing rights for the sake of the common good, it presupposes the existence of inalienable rights.

<sup>233</sup> The real difficulty in the constitutional state is only the admissibility and extension of the law of necessity," said Radowitz, *Fragmente*, I = *Ausg. Schriften*, 11, 345. The two criteria mentioned by him, by which good law of necessity is to be measured (necessity must really exist and self-defense must not extend further than necessity), are non-binding, since it depends on the interpreter, but in them there is an unmistakable intention to keep the state of emergency within limits. Whether what was normal for Radowitz was also normal from the point of view of his political enemies is, of course, an entirely different question.

<sup>234</sup> Cf. the draft of a speech by Chateaubriand from the year 1820, *Oeuvres*, XIV, 105.

<sup>235</sup> *Verm. writings*, I, 76, 79.

<sup>236</sup> *A. a. 0.*, 77.

The<sup>23</sup> modern doctrine of sovereignty, however, says <sup>7</sup>nothing else, according to which sovereignty is

The sovereign is "the absolute power and the unconditional, unrestricted right to bring about the good of society"; "no property and no contract is valid downward against this power and this absolute right" and the sovereign does not direct his actions according to distributive justice, but - just like the revolution - according to the concept of the general good<sup>238</sup>. Jarcke counters this "unholy edification of the last centuries," from which absolutism and revolution arose, with the traditional concept of sovereignty, in which sovereignty is divinely sanctioned, but absolute power that violates foreign rights is<sup>239</sup> unknown. It is therefore illogical and impossible to oppose the revolution with its own principle, namely modern sovereignty and the denial of any right in the name of the general good; the "well-wishers" who oppose the revolution with unbridled absolutism must have<sup>240</sup> "lost the concept of right down to the last trace. Jarcke wrote this almost two decades before the Bonapartist phenomenon, which deeply impressed not only Marx but also the conservatives and made<sup>241</sup> their attitude toward dictatorship even more reticent. But even in the case of the two most determined advocates of a conservative dictatorship, who also presented 1851 their plans beforehand and therefore did not yet have to take into account the danger of Bonapartism, the intention to keep the dictatorship within the limits of a commissarial one and not to let it escalate into a sovereign one clearly emerges. Donoso Cortes, who formulated 1848 his plea for dictatorship under the impression of the popular movements of , justified it in the context of a historical retrospective, in which the stages of the dictatorship were described.

<sup>237</sup> *A. a. 0.*, 72-74.

<sup>238</sup> *A. a. 0.*, 68.

<sup>239</sup> *op. cit.*, 70f.

<sup>240</sup> *A. a. 0.*, 69.

<sup>241</sup> Of course, this only applies to Germany, since the question of a conservative dictatorship did not arise for France (after 1830) and England. Thus, the conservative "Staatslexikon" speaks with unmistakable confidence of the state of siege as a transitional stage to caesarism and expresses understanding for the liberal antipathy toward dictatorships (III, 517f.). At the same time, it emphasizes the fundamental distinction between "saving acts" undertaken by the head of state to preserve the existing constitution and "coups d'état" or "revolutions from above," and regrets that this distinction has been "completely lost in recent times" (XIX, 616, Art. Staatsstreich, rettende Thaten). Very revealing is a saying of Friedrich-Wilhelm IV from the year 1855, delivered by the Gerlachs: "Among the parties, only Caesarism is possible, and since our mild ancestral princes will never be virtuosos in it: Bonaparte". (*Nachlaß* 3, I, 356). This means that, since the nobility is by its very nature incapable of establishing a consistent dictatorial rule, a dictatorship must help those forces to prevail that are equal to such an undertaking and will for that very reason turn against the nobility itself.

The first part of the story is the reconstruction, in the traditional conservative manner, of the loss of liberty during the modern era: The feudal monarchy is followed by the absolute one, with its standing armies and its administrative centralism, and on the level of repression already reached by it, the technical inventions create the possibility of a previously unimaginable tyranny.<sup>242</sup> The commissarial character of the dictatorship demanded by Cortes already results from the description of the abominable, but nevertheless sovereign dictatorship of the enemy: for only from such a dictatorship can absolute unfreedom (as Cortes defines it) arise, or rather, only in such a dictatorship can absolute unfreedom culminate. only in such a dictatorship can absolute unfreedom culminate. Cortes' dictatorship, on the contrary, is intended to put a stop to the development toward absolute unfreedom, not, however, by forcibly subduing it at one stroke, but much more by providing a breathing space and thus permitting a first step toward the recovery of the great religious truths whose fading had paved the way for political tyranny. It is not <the essence of rule based on these truths that compels dictatorship, but only the tangible danger of dictatorship from below, which is to be<sup>243</sup> <anticipated by dictatorship from above- On the contrary, according to Cortes, democratic or revolutionary dictatorship follows from the essence of democracy or revolution itself, and precisely from this it can be seen that sovereignty in the modern sense, and therefore also sovereign dictatorship, is only in question on the side of revolution, but not on that of counter-revolution.

Cottu also calls for a provisional dictatorship, i.e., one that is exercised on behalf of and for the benefit of the aristocratic upper class. The monarch must act dictatorially against those who threaten the social position of the upper class, but at the same time he must not lay claim to sovereign rule over the latter. This is the ideal dictatorship from the noble point of view. Therefore, Cottu resorts to the usual anti-absolutist argumentation at the very moment when he is arguing for the "necessity" of the "dictatorship".

of a dictatorship". Jamais le pouvoir absolu n' a ete reconnu en France; jamais la nation n' A consenti a etre gouvernee par la volonte arbitraire de son prince" - and if the Bourbons must remain on the throne, then only because they guarantee the "vraie liberte", while another government <sup>244</sup>would end in despotism. But this monarchical constitution, which guarantees the freedom (of the ruling upper class), should be such that "the privileges puissent arreter les entreprises de peuple, et maintenir leurs prerogatives, qui sont toujours odieuses par elles-memes et toujours en danger dans un Etat libre"<sup>245</sup>. Cottu accepts the defederalization of society that took place after 1789; he knows that the current prerogatives of the upper classes are not to be

<sup>242</sup> Discurso sobre la dictadura, Obras, II, 318-319.

<sup>243</sup> A. a. O., 322.

<sup>244</sup> De la necessite, 18, 24.

<sup>245</sup> A. a. O., 24.

The present-day nobility resembles the former feudal lords, and even recognizes a minimum of formal equality and the rule of law.<sup>624</sup> However, it is essential that this remains the case, and for it to remain so, the chambre, which is supposed to keep the monarch in check, must be made up exclusively of those who have the right to be in power.

are<sup>247</sup> "personnellement interessees au maintien des privileges etablis. If, in any case, the Chambre came to be controlled by "revolutionary" elements (and, according to Cottu's assessment of the situation, this was already the case), the conflict would be unavoidable, and the only question that now had to be answered would be that of the "revolutionary" elements.

The main question for the Crown was "to know what is the moment that is most favorable for starting a war **that** is impossible to avoid". The conduct of the war on the part of the

privileged minority must culminate in dictatorship, but it would not be wise to start there. Cottu proposes a different procedure. The dictatorship should

<The Crown should be prepared by various royal ordinances, and when the right moment comes, the Crown should declare that the security of the state is in danger and seize the "pouvoir constituant", that is, dissolve<sup>248</sup> the legislature.

We feel bound by the constitutional promises, etc., "car personae ne peut etre contrainte a travailler a sa propre ruine"<sup>249</sup>. Here we hear, beyond

of any theologically colored rhetoric about God-given right, etc., the secular voice of naked self-preservation. At the threshold of the decisive struggle, everything appears as a struggle, there is no time for clarifications, sublimations or rationalizations, and history is understood solely from the point of view of the gratification of power. It is worth quoting Cottu's reflections in this regard: "L'histoire de chaque peuple n'est que l'histoire des efforts de chacune des classes qui composent ce peuple pour s'emparer du pouvoir; comme l'histoire du monde n'est que l'histoire des efforts des differens peuples pour s'asservir mutuellement ... Ni le droit de propriete, ni le droit d'heredite, ni aucun droit civil, ne sont ecrits sur la voute de cieus ni dans la conscience de l'homme. Ils sont tous le resultat de la loi sociale; et lorsque cette loi est brisee, tout alors est remis en probleme".<sup>250</sup> This may all be true. But when Cottu wrote down these sentences, he obviously failed to realize that the idea of power speaks for the conservative cause only as long as the conservatives are the more powerful.

<sup>246</sup> A. a. O., (97, 146

<sup>247</sup> A. a. O., cf 22., Daffir 19, 98. soil provide the electoral law proposed by Cottu. (69 ff.).

<sup>248</sup> A. a. O., 118f

<sup>249</sup> A. a. O., 106.

<sup>250</sup> A. a. 110-112.0.,

#### 4. The idea of the *societas civilis* in the struggle against the modern state

##### *a. The Conservative Concept of State or Society The Unity of Ethics and Politics and the Rejection of the state reason*

The out-and-out rejection of the modern doctrine of sovereignty - despite the recognized necessity of a backlash against the absolutist state apparatus in order to suppress the revolution and despite the intensification of conservative activism in the (demand for) dictatorship - constitutes the negative and indirect proof of the conservatives' adherence to the idea and reality of the *societas civilis* after 1789. The positive and direct proof is provided by their statements on the nature, origin and "natural" structure of the polity, statements which are all based on Aristotelian-Scholastic thought and are original only to the very small extent that a processing and supplementation of this thought for the purpose of refuting a particular aspect of liberal or democratic social theoretical constructions appears to be of note. The Aristotelian-Scholastic topoi, then, basically retain their original meaning, since they ideologically reflect the reality of the *societas civilis*, which the conservatives also want to keep alive; in their current polemical use, however, they are charged with a particular ideological content, in which the hopes, goals, and desires, in short, the normative ideas of the conservatives after 1789 are embodied. As an example of this polemically and ideologically conditioned shift or extension of the meaning of traditional topoi, we can mention the thesis that *societas* was created by God for the spiritual perfection of man, which can only be realized by living together with others<sup>251</sup>; in the ancient Aristotelian

In the Christian medieval context, it underpinned the socially leading position of the church as a spiritual institution, whereas after 1789 it was<sup>25</sup> deployed primarily in the struggle against liberal economism and "materialism" together with its anthropological presuppositions.<sup>2</sup>

The intertwining of social-theoretical statements and legitimation purposes in the conservative reformulation of Aristotelian-Scholastic topoi is already evident in the affirmation of the principle that *societas* is not made,

<sup>251</sup> See, e.g., Burke, Reflections, Works, III, 354. Burke here recapitulates the Aristotelian scholastic tradition, presumably through Hooker's mediation, cf. the remarks of Schell, Engl. Rechtsdenken, ff.110

<sup>252</sup> See section 7a of this chapter.

but is God-given and has existed since time immemorial. Here it is not just a historical statement, but it is implied at the same time that a community that has not been made cannot be made or changed. More concretely: if it has always existed, it must always have existed in its form known since ancient times, i.e. as *societas civilis*, and will not be able to exist in any other form; for, if it existed before any conscious socio-political activity of man, it cannot have received its form from man, but only from a higher power, which just proves the unchangeability of this form. And vice versa: if the commonwealth has come into being by virtue of a deliberate and purposeful human activity, it can be made again, i.e. its form can be changed from<sup>253</sup> the ground up. The dispute about the origin of the polity is thus only the reverse side of the highly topical dispute about its feasibility, i.e., about the (theoretical) legitimacy of the revolutionary claim to form the polity according to the postulates of human reason or human sovereign will. In a passage by Bonald, who was perhaps most directly influenced by scholastic thought among all conservative theorists,<sup>3</sup> the scale of thought described above is expressed in a condensed form: "La societe existe: elle est done dans la nature de l' homme; Jes lois de son existence sont done necessaires,comme la nature de l' homme". - <sup>254</sup>From the mere existence of a thing, of course, its necessary anchoring in nature itself does not follow, and therefore it is not obvious why the *societas* should be founded in the nature of man by virtue of its existence; from a purely logical point of view, the necessity of the *societas* should rather be derived from the nature of man than from the existence of the *societas* its necessary anchoring in human nature. This logical leap, however, arises from Bonald's haste to place the reason for the existence of *societas* in a deeper and firmer layer of being. The genetic dependence of *societas* on human nature does not mean that the community was brought into being by human will; human nature does not coincide at all with the<sup>255</sup> - unsteady - will of finite man, but it is the work of God, so that the rootedness of *societas* in human nature is equal to its rootedness in the independent will of God. According to Bonald, however, it is not the *societas* in abstracto that is rooted in the nature of man or in the will of God, but the *societas* as it lives under certain necessary laws. From the necessity of the *societas* iber-

<sup>253</sup> See, e.g., Muller's summary of the theoretical implications of the "„unfortunate doctrine" that there was a state of nature and a time before all states, Elements, II. = S. 27-29.

<sup>254</sup> Theorie du Pouvoir, Preface = Oeuvres, III, 14.

<sup>255</sup> Bonald makes this important distinction a few times, for example in the sentence: "La constitution politique des societes est le resultat ne essaire de la nature de l'homme, et non le fruit de son genie ou du hasard des evenements", a. a. 0., I, =1,13 Oeuvres, III, 116.



Thus, the necessity of a certain form of *societas* is derived from the interconnection of God and (human) nature.

This can be seen very clearly in the way in which the "lois necessaires" that are present in the *societas* are defined. According to the first of these, the "pouvoir", as Bonald always writes in close reference to the scholastics, is as much in the nature of the *societas* as the *societas* itself is in the nature of man, therefore the "pouvoir public" is also "conforme à la nature". des etres en societe"<sup>256</sup>. In the „pouvoir public" or „general" now the general will<sup>257</sup> of the *societas* to conserve itself, and this succeeds in that the *societas* constitutes itself on the basis of certain "lois fondamentales", i.e. by the fact that the pouvoir is formed in a certain form capable of action, from which the constitution of the *societas* results. These fundamental laws, just like the pouvoir or the *societas* itself, derive from human nature - and it is no different with the "lois politiques", which for their part are a necessary consequence of the lois fondamentales, and as such have the task of have to determine<sup>258</sup> in detail the modalities of the form of government. The close connection between *Lois politiques* and *Lois fondamentales*, which is also expressed in the synonymous use of both terms, is so important in concrete because the ruling position of the nobility (described by Bonald as "heredite de la profession militaire", which provides for the "fixite et perpetuite de la force publique") is one of the central *lois politiques*, indeed it is "consequence necessaire de la loi fondamentale des distinctions sociales, et fondamentale lui meme" 25.9 Given the coherence of this deduction, which begins with God and ends with the individual *lois politiques* via human nature, a very specific form of *societas*, in which very specific persons rule, must appear as the only possible *societas*. This is the concrete implication of the theory of the impossibility of *societas*. Precisely because, in Bonald's eyes, the fact of *societas* as such is incompatible with a certain form of *societas*, the fact of *societas* as such is incompatible with a certain form of *societas*.

trennally connected, it demands the total socialization of the individual<sup>260</sup> through

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<sup>256</sup> A. a. 0., I, 2, 3 = Oeuvres, III, 123, in connection with *Demonst. Philos.*, VI = Oeuvres, VIII, 55. de Maistre, *Du Pape*, II, 1 = Oeuvres, Sp. 327; cf. Burke, *Reflections*, Works, **II**, 354. On the influence of de Maistre on German conservatives, who welcomed Hailer's patrimonialism but feared his "naturalism," on this very point, see Scheel, *Berl. Pol. Woch.*, 49 (, 54ff.; cf. E. L. v. Gerlach, *Aufz.*, 288.

<sup>257</sup> For the meaning of this term in Bonald, see above, section a3 in this chapter.

<sup>258</sup> *Theorie du Pouvoir* I, 3-6-121, = Oeuvres, III, 78-80, 51, 114.

<sup>259</sup> A.O. a. , I, = 1,7 Oeuvres, III, Cf86.. the following passage, which is also interesting in terms of conceptual history because of the connection of the conservation term with nobility (cf. above chap.

II, para. 4a): „Dans la societe politique, il n'y a de force de conservation que dans la profession essentiellement conservatrice, c'est-ii- dire la noblesse", a. a. III0., (23), Oeuvres I, IV, 351.

<sup>260</sup> A. a. III,0., =1,1 Oeuvres, IV, 193.

a practically all-encompassing educational program: the all-round integration of the individual into the *societas* must, under the aforementioned conditions, amount to the unreserved approval of the *societas* favored by Bonald. The goal of socialization here is the eradication of that individual reason which questions the existing form of *societas* and thus, according to the conservative view, threatens to dissolve *societas* altogether and as such.

Also in the case of the other conservatives, who do not present their theories with Bonald's deductive coherence, the connection of the thesis of the impossibility of *societas* with the double interest of both legitimizing a certain form of *societas*, i.e. the aristocracy, and denying the reformatory or revolutionary claim of the commonwealth can be seen. For man, the bearer of this society, cannot step out of the commonwealth in order to contemplate it from outside, to judge it, and to construct it accordingly; every real or conceivable individual stands in the midst of that historical process which constitutes the multifaceted life of the *societas*, and it is impossible for the said process to begin simultaneously with the individual and with his society, since no state can be imagined before the *societas*: when the *societas* *Naturist*, there can also be<sup>261</sup> no state of nature without *societas*. It lies on It is clear that a state of nature in which social life is lived cannot be a crude or semi-animal state; this nature must therefore always contain a smaller or larger amount of culture. This must be emphasized so that we can understand occasional conservative statements asserting the kinesthetic character of *societas* and social institutions. This is not a contradiction, but a polemically conditioned modification of the basic thesis of the naturalness of the *societas*. Since the revolutionary natural law, for its part, invoked nature and the state of nature, the conservatives had to argue that the idea of a state of nature could only be combined with the assumption of an original equality of all men, because at that time men were actually not yet men; in the measure in which raw, bare nature was overcome and man became a man, i.e. his

"true" determination of nature, hierarchy and inequality also arose; these are indeed kinesthetic with regard to raw nature, in which all are raw and equal in this their rawness, but they are not so when measured against the scale of The "true" nature can be measured in terms of the actualization of the potentialities that were originally inherent in it. For example, Burke argued to prove the naturalness of aristocracy and the corresponding form of government: "The

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<sup>261</sup> See, for example, Muller, *Elemente*, II = p. ff22. It is worth mentioning, that Miiller, the

reader

A. Smith's, to prove the necessity of the state (= *societas*) also uses a very modern argument: history can be understood as the struggle of man with the earth, but this struggle can only be waged collectively, i.e. by economically and legally organized people (a. a. 0., III = p. 380).



state of civil society which generates this aristocracy is a state of Nature - and much more truly so than a savage and incoherent mode of life. For man is by nature reasonable; and he is never perfectly in *his* natural state, but when he is placed where reason may be best cultivated and most predominates. Art is man's nature" And <sup>262</sup>Rivarol remarked against the revolutionary program of basing social organization on natural facts and deriving social equality from natural equality, "que le corps politique est un être artificiel qui ne doit

rien à la nature; que les hommes naissent inégaux, et que la loi est l'art de niveler les inégalités de la nature" <sup>263</sup>. In the given political constellation it was not possible to argue otherwise: if the revolution stood up for the rights of nature, the conservatives had to protect the physical and the cultural, i.e. to dismiss the revolutionary concept of nature as crude and barbaric; if, on the contrary, the revolution extolled the rights of reason, the conservatives could not but assert the primacy of nature, as manifested in the *societas*, over reason. Various crossings and mixtures of the concepts of nature and reason, each in a different dosage, ensured the satisfaction of the conservatives.

The development of all possible casuistic requirements in all possible ideological Notlagen.

In addition to the theory of the naturalness of the *societas*, the conservatives of the Aristotelian-Scholastic social-theoretical tradition also adopted a second central motif: the consideration of the (great) family or *oikos* as a fundamental unit and at the same time miniature of the *societas*. This social-theoretical topos was also connected with legitimation intentions, since the noble lord was still has always been seen primarily in its capacity as *oikos* leader; the Preservation of its elementary power base must therefore appear as a prerequisite and guarantee for the continued existence of the *societas civilis* at all, if *societas* is actually composed of such *oikoi*. The *oikos* is the elementary unit of the *societas* not only numerically, but also qualitatively and structurally; it is a *societas in parvo* and contains all the real and ideal elements that make up the *societas in magno*. The perfect analogy between the patriarchal extended family and the monarchically governed *societas*, often claimed by conservatives, <sup>264</sup> was elaborated in detail by Bonald and at the same time extended to a general theory of all forms of organization of the community. The thesis that the two "états" of the *societas*, i.e. "domestique et publique", had "une constitution semblable" <sup>265</sup>,

<sup>262</sup> Appeal, ... Works, IV, 175 (Likewise, Burke regards the people as *ecwas*, „wholly artificial" when he is concerned with the notion of an already in the state of nature, i.e. before the constitution of a *societas*, organisierten and entscheidungsfähigen people to deny (a. a. O., 169).

<sup>263</sup> Extraits du Journal, Oeuvres, IV, 113.

<sup>264</sup> See, for example, Haller, Restoration, II, f25.

<sup>265</sup> Legislation primitive, II, =5 Oeuvres, I, 390-2.

is explained through a series of symmetrical triangles, structurally unifying the <sup>266</sup> familial (father - mother - children), social (king - nobility - third estate), political (government - minister - subjects) and religious (God - priests - believers) levels. The social type of the *família*, which Bonald regards as an elementary building block of the *societas*, is "la famille agricole et propriétaire", i.e. the *oikos* of the noble landowner <sup>267</sup>. The union of several such families creates

"l'état politique de la société", where the *societas* expands without changing its essence; because "comme la famille était un .Etat en petit. . . , l'Etat lui même n'est qu'une famille en grand" <sup>268</sup>. Although the family owes part of its people and property to the political organization of the society, this must not lead to its unconditional subjection to the governing authority; against the tendencies toward this, which have been apparent for a long time, Bonald emphasizes the right of the family to independent life and recalls that the family can exist without the state, but not the state without the family; the real task of the state therefore consists in the "conservation of the familles" <sup>269</sup>.

The background and goal of such prioritization are obvious.

For conservative social theory, it is a fundamental question whether the elementary building block of the community is the family or the individual. Depending on how this question is decided, two fundamentally different types of community emerge before our eyes. If we start from the individual, the result is a "variable state" and a "system de l'homme"; on the contrary, "l'état fixe" and the "system de l'homme" are formed on the basis of the family.

la nature", i.e. the fixed order <sup>27</sup> willed by God. <sup>0</sup> This latter type van

The community is not supported socially and politically by all individuals without exception, but only by the *Oikos-Führer*, who are <sup>271</sup> not mere subjects in the sense of modern statehood, i.e. not equals among equals.

<sup>266</sup> Essai anal. sur les Lois Naturelles, Disc. Pré! = Oeuvres, I, ff;5 Demonstr. Philos. , II-VIII = Oeuvres, VIII, ff46 Cf. the analysis of Moulinie, Bonald, ff.288

<sup>267</sup> Demonstr. Philos., V = Oeuvres, VII, 54.

<sup>268</sup> Des lois et des mœurs , ...Oeuvres, VII, 552f Typical conservative reconstruction For a description of the path from family to *societas* with reference to the biblical text, see Jarcke, Verm. Schriften, III, 37 ff, and Marwitz, I, 37, who also succeeds in a very lively formulation of the patriarchal concept of rule of the noble *oikos* leader (II, £).2,258

<sup>269</sup> Pensées, Oeuvres, VI, 28, In the same way <sup>30</sup>, the priorities are assessed by Fr. friiheren Fragmenten (1798/9), see Werke, XVIII73., 293,397.

<sup>270</sup> Bonald, De la Souveraineté , ...VI = Oeuvres, I, 90ff.; cf. Schlegel, Fragmente (1827). = Works, XXII, 353: The false state is composed atomistically of individuals; the true organic state is based on the family.

As Moser noted, the concept of the "national subject" is not old and therefore it cannot be constitutive for the community. Moser contrasts this still young concept with the ancient reality of the *oikos* based on "Hörigkeit", works,

Only those "persons in the state" deserve to be called, who "represent their particular household in a ruling way, while they are subjected to the other larger household as serving members"<sup>272</sup>. This does not mean, of course, that at least these persons are individuals in the modern sense. On the contrary: they fulfill their state-bearing task only in their bond to an *oikos* and to a state - a bond that must be at least as strong, if not stronger, in the case of the *iibrigen* members of the *oikos*. Like the theory of the naturalness of the *societas*, the emphatic and conservative reference to the unstoppable interconnectedness of the individual with family, class, and people<sup>273</sup> serves to withdraw the impulses and claims of individual reason from the outset. In a positive sense, this interdependence is called "solidarity" in order to emphasize its ethically and religiously legitimizing aspect. Donoso Cortes, who uses the term, always adds that not much good can be expected from solidarity without hierarchy. good can be expected from solidarity without hierarchy. The liberal and democratic revolution simultaneously undermines solidarity and hierarchy by granting equal rights to all individuals as individuals, i.e. without regard to family, class and people; the abolition of the family in particular, however, must ultimately also entail the abolition of property <sup>274</sup> . Here Cortes ties in<sup>275</sup> with the early conservative criticism of revolutionary and Napoleonic family law.

The theory of the naturalness of society and its theoretical construction from the patriarchal family, which was already based on clear relationships of domination, were both opposed to the view that society arose by virtue of the free association of autonomous individuals - in other words, they were opposed to the modern theory of contracts. The priority of the individual's activity in the process of the creation of the community, assumed by this theory, meant a revaluation of his calculating and planning insight,

IX, 282 £, 297 £, cf. 305; on the emergence of serfdom within the patriarchal extended family, see X134., 153,155.

<sup>272</sup> Thus Milller, *Theorie des Geldes*, Niche38. Jarcke also comments less categorically. In the monarchies, the pure family principle prevailed, in the republics, on the other hand, the principle of "society" or "community" (meaning several families electing an authority); "it is quite wrong, however, to regard the state as a society in the sense that all individuals living in a country were members of it" (Verm. Schriften, III, 103 £). State" and "society" here mean as much as *societas civilis*, see below.

<sup>273</sup> Characteristic statements in Baader, *Schriften*, £347, 363; Marwitz, II, 2, Zu66. Bonald cf. Spaemann's analysis, *Origin*, 95et seq.

<sup>274</sup> Obras, II, esp. 640ff. Cf. Cortes' construction of the *societas* from the family according to the traditional scheme, a. a. 0.,521.

<sup>275</sup> Already Burke, see e.g. *Letters on a Regicidal Peace*, I = Works, V, 312ff.; Rehberg, *Code Nap.*, 121ff. On Bonald's vehement polemic against the law of divorce, see the discussion in Anm. 266 mentioned analysis Moulinies.

that is, the elevation of the individual reason to the standard of the good and the right. According to the conservative view, however, the modern theory of contract celebrated not only the willful individual, but also the sensual and worldly oriented individual; for if the individuals have established a community on the basis of private considerations and purposes, then they must have been guided by the consideration of their own welfare and benefit. Secular eudamonism and utilitarianism gain the upper hand here, whereby the divine right as the basis of the community falls<sup>276</sup> by the wayside. For the latter presupposes the state immediacy of all individuals - and it is precisely this state immediacy that is alluded to in the retrospective fiction that all individuals as such were involved in the foundation of the state, that is, they are in direct contact with it as citizens. If all individuals as such are not directly involved in the state, i.e. if the *oikos* leader stands between the simple member of the *oikos* and the political head of the community, then it is not possible to imagine a state-binding process in the modern sense. The rejection of the individualistic theory of contract is therefore not merely a rejection of a certain conception of the origin of the community, but it is at the same time and above all a statement about its character, a plea for the *societas civilis* in its structural contrast to the modern sovereign state.

In this perspective, it is not surprising that the preferred historical argument is The main argument of the conservatives against the contract theory is the deduction of the *societas* from the family, which in turn, in view of the consideration of the family as *societas in parvo*, amounts to the thesis of the absolute historical priority of the *societas*. This historical priority of the family is the proof that the state of absolute equality among all individuals, which the theory of contract assumes, never existed anywhere, since the elementary hierarchical structure, which is obligatory for all forms of *societas*, already existed within the *oikos*. The assertion that the individual never lived alone does not mean, therefore, that he lived together **with** others for mutual support and help, but, moreover, that he was from the beginning on a level of a social hierarchy; but if it was in fact so, then it would be absurd to suppose that the one who was higher on the hierarchical ladder would conclude<sup>277</sup> a contract with his subordinates from the same to the same for the establishment of a society.

<sup>276</sup> The train of thought in Marwitz, I, 39 £ The same rejection of utilitarianism in connection with the rejection of the contract theory is expressed in the following fragment of Schlegel (*Werke*, XVIII, 420): "To regard the republic [= *res publica*] merely as a contract is just as bad as to regard it as property [= as an institution for the protection of property]".

<sup>277</sup> Cf. the argumentation of Haller, *Restauration*, I, ff295. Haller develops his own contract theory, which, however, does not in any way deny the original existence of equal

The "union of the chiefs" in very early times, by which they entered into a "cooperative", is not excluded, but it is denied that this was "the first arrangement of nature": for "each chief formed with all his servants and countrymen a small state of his own, and at last these independent princes concluded a union among themselves"<sup>278</sup>. If, therefore, a *pouvoir* already exists within the *oikos*, the indispensable equality of the contracting parties is missing; if, on the other hand, the contract is concluded before the *pouvoir* is instituted, the *pouvoir* resulting from this contract must be an unsteady product of human will. By this dilemmatic formulation Bonald wants to point out the double impossibility of the contract before or after the establishment of the *pouvoir* in the *societas*, with reference to the nature of this *pouvoir*, which as God-given must<sup>279</sup> both historically precede every contract and be qualitatively superior to every purely human institution. This is the last and strongest conservative argument against the contract theory: that the *societas* and the authority in it are founded in the will of God and sornit also in the uncreated idea of law, serving the higher purposes that God has set for the human race<sup>280</sup>.

We need not go into the numerous but uninstrutive variations of the main conservative arguments against contract theory just summarized. It seems more worthwhile to explore the two main cases in which conservatives use contract theory itself, in order to see how this affects the coherence of the conservative position, as has sometimes been claimed. In Moser's case, our first, it is confusing that he speaks of the *societas* as a joint-stock company, thus giving the impression that he is speaking of a mere utilitarian foundation of equally entitled individuals that can be dissolved at any time. However, this is no more than a misleading metaphor taken from the fashionable language of the time. For Moser, the word "share" does not symbolically stand for a bourgeois-utilitarian view of the social phenomenon, but it only means the concrete property that each member of the *societas* originally possesses<sup>281</sup>, - this property, however, is essentially differentiated by its uniqueness and its differentiating effect.

In this respect, the fears of some conservatives that Hailer's basic attitude toward private law could undermine the concept of *societas* were unjustified. S. v. Sonntag, *Staatsauff*, 75ff.

<sup>278</sup> Jarcke, *Verm. Schriften*, III, Jarcke236. criticizes Moser here, but he millversteh,t see below

<sup>279</sup> *De la Souverainete . . .*, III = *Oeuvres*, I, f52

<sup>280</sup> Cf. Stahl, *Rechtsphil.*, II, 170ff.2,

<sup>281</sup> -On the right of mankind in so far as it can serve as the basis of a state (1791) = Works, IX, 159. Even faith in Christ is called a share=property here, which enables its possessor access to the kingdom of God.

of the share of a joint-stock company, which is quantitatively and qualitatively equal to every other share of the same joint-stock company. That Moser's unfortunate metaphor does not imply a concession to the individualistic contract theory is already evident from his explicit commitment to the *topos* of the natural social destiny of man.<sup>282</sup> He develops his own contract theory only in order to deprive<sup>283</sup> the use of the contract theory on the part of absolute monarchs and other enemies of the *societas civilis* of its theoretical basis; he thus elaborates the "good" contract in order to be able to play it off against the "bad. Accordingly, his theory of contract aims at denying the right of a nation to create its constitution *ex nihilo*; It does not assume a union of all individuals in their fundamental equality for the foundation of a *societas*, but says, on the contrary, that this union was the work of the great *oikos* leaders, the first conquerors and owners of a country, namely the hereditary nobility and all those who had "real" land ownership. the burghers had no part in this treaty. A second, later treaty regulated the relationship of the first founders of the *societas* to descendants or arrivals; the existence of this second treaty explains why not all inhabitants of a country have the same rights, so that they are also not entitled, completely independent of the will of the numerical majority, to reshape<sup>284</sup> the *societas* together. In order to further strengthen the social hierarchy, Moser somewhat later introduced into his scheme the additional assumption that the difference of status was already foreseen in the first contract, although it was only formed by the second<sup>285</sup>. In other words, they are contracts that do not originate in the world of thought of modern natural law, but rather in the Aristotelian-Scholastic tradition and in old-*stan dic* practice. Moser's equation of laws and contracts<sup>287</sup> is a further indication of his standard understanding of contract.

The same Aristotelian-scholastic background and the same standic understanding of contract explain Burke's contract theory. Here, too, the main target is the modern individualist theory of contract, which, according to Burke, exposes<sup>288</sup> the *societas* to the danger of dissolution at any time. At a time when the concept of contract is already at the center of social theory and policy, Burke's

<sup>282</sup> *Patr. fantasies*, III, =20 works, VI, 64.

<sup>283</sup> Works, IX, 366.

<sup>284</sup> When and how may a nation change its constitution? (1791), and: -Ober die Einwendungen des Herrn K. (1792) = *Werke*, IX, esp. f180, f184, f187

<sup>285</sup> *Wie der Unterschied der Stände (...1793)* = Works, IX, 193.

<sup>286</sup> See above chap. II, para. b4.

<sup>287</sup> Works, IX, 344.

<sup>288</sup> *Appeal*, ...Works, IV, 184.

Burke wants to construct the "true" social contract or to reconstruct it from traditional materials and thus ideologically put the enemy's "false" conception of the contract out of action. In doing so, the social contract is denied any individualistic, rationalistic and voluntaristic character, so that the impression must arise that an existing binding contract is spoken of **here** only with the negative intention of emphatically denying the right (also that of the majority) of the individuals to step out of it and to call a new one into being. It is not the process of the formation of the contract that is of interest here, but its indissolubility, i.e., the safeguarding of the permanence of what exists: thus, some conservatives turn the concept of contract into its opposite, after having<sup>289</sup> seemingly adopted it at first. As Burke explains, although the constitution of a country or civil society "in many cases" may have arisen on the basis of a treaty or a "voluntary act," <loch from that moment on there is no longer any power that could revoke what has been established by treaty, especially since those born afterwards <by the mere fact of their birth, which places them, without their prior consent, in the midst of a certain network of rights and obligations, de facto accept the content of the concluded treaty<sup>290</sup>. Burke leaves it unclear whether the contract he assumes concerns the foundation of the *societas* at all or only the form of government. One reason for this theoretical indulgence is, of course, that his interest is exclusively in the indissolubility of the contract, and since he at the same time considers the existing traditional form of government suitable to satisfy the higher ethical demands of the *societas civilis*, the difference between the form of government and the *societas* altogether becomes equal to him at least in this respect: for him the revolution destroys the *societas* as such by destroying the existing form of government. But if for this reason the narrower scope of the treaty seems beside the point and remains unclear, Burke, on the other hand, leaves no doubt about its character. His contract has no resemblance to the contracts which, for example, commercial companies enter into; rather, it is based on a partnership which comes into being with a view to the attainment of higher ethical goals and can therefore accomplish its tasks only in longer periods of time, so that it must embrace the dead, the living, and the still unborn, while at the same time, by virtue of its purpose, it remains steadfastly and consciously anchored in the divine order. If this is so, then, finally, contract means as much as the traditionally existing constitution of the community, which is independent of the will of individuals and genera-

<sup>289</sup> Cf. the remarks of Docks related to Gentz, *Souveranitat*, 102.

<sup>290</sup> Appeal ... As early as 1765, Burke had emphasized that the functioning of a *societas* was by no means based on its conscious approval by the individuals (*Works*, I, 6£).

In this way,<sup>1</sup> the speech of the contract is deprived of its modern, natural-law content and an important word of the revolutionary vocabulary is robbed<sup>292</sup> of its aggressive pragmatism.<sup>29</sup>

The reader will have noticed that in the preceding discussion of conservative social theoretical principles we have avoided the term "state" as far as possible. In this way, we have tried to avoid confusion between the conservative concept of the state and the modern one, especially since the conservatives themselves have tried to distinguish clearly between the two concepts of the state, even and especially when, as was the rule in Germany, they used the same word ("state") for both concepts of the state; then they speak of the "state" in a positive sense, when they mean by it the *societas civilis*, and in a negative sense, when they mean by it the modern sovereign state. In doing so, they were so aware of the fundamental structural and historical difference between the two concepts of the state that they anticipated the research results of our century on this central question. Thus, for example, we read in the

The "Staatslexikon", that the term "feudal state" creates a "confusion of terms". The difference between the feudal and the modern state lies in sovereignty, i.e. in the fact that "the state of the Middle Ages, if the term was known at all in the modern sense, was a real union of land and people, but according to the modern conception land and people are there for the concept of the state" - in other words: "the pre-modern state was an association with real purposes" (protection of faith, peace, rights and freedoms), "the modern state is a personal state". In other words: "the pre-modern state was an association with real purposes" (protection of faith, peace, rights and liberties), "the modern state is a personalized product, ...in which private rights are valid only as far as the state's sovereignty... permits"<sup>293</sup>. The state in the pre-modern, conservative sense is therefore not the omnipotent entity that sovereignly opposes the life of the *societas*, its rights and freedoms, but the life of the *societas* itself, the point in which the essence of a multidimensional and at the same time homogeneous structure is condensed - it is "the community of people raised to an autonomous organic personhood, the living organization of the life of the people and its culture".<sup>294</sup>

The modern state now subjects the rights and liberties of the *societas* to its sovereign omnipotence and thus ultimately loses the *societas* by relying on

<sup>291</sup> S. the central passage in *Reflections*, *Works*, III, 359£ Cf. in general the excellent analysis of Burke's conception of contract in Hilger, *Burke*, esp. 72ff., 84£, 91ff., 100£, 109£

<sup>292</sup> Characteristic of the conservative attempt to deprive the concept of contract of any revolutionary connotation is also Coleridge's definition of it: Contract is finally "merely synonymous with the sense of Duty etc", *The Friend*, Coll. *Works*, IV, 173f.

<sup>293</sup> VII, 378£ (Art Feudal).

<sup>294</sup> A.a. O., XIX, 578 (Art. Staat). Cf. Joachimsen's remarks on Ranke's concept of the state; *Psychology*, 589.



a higher purpose of the state, to which everything else must be subordinated; hence the conservative aversion to this concept of the purpose of the state<sup>295</sup>. In fact, this concept in itself suggests *the* existence of a higher entity that lives from the state purpose and must enforce it against the particular and idiosyncratic concerns of the *societas*; it thus implies the separation of state and society because of their qualitative difference in nature and purpose. On the other hand, *those who are* concerned with the preservation of the monistic structure

of the *societas* struggling conservatives, between government or state power and the "so-called private social relations" are only quantitative, not essential differences<sup>296</sup>. For the conservatives it is therefore important not to let the concept of the state be absorbed by the concept of administration and government. They therefore reproach the "absolutists" with having misleadingly use the<sup>297</sup> term "state" instead of "government", and Furthermore, they deny that despotism can be a state (in their sense): for in despotism there is government and administration, but not those rights and freedoms *that* had constituted the essence of *societas*<sup>298</sup>. Bonald had already conceptually separated "government" and "constitution" in 1796 and defined despotism as government without constitution<sup>299</sup>. Among the English conservatives, too, the traditional<sup>300</sup> distinction between the two was no longer valid. between "government" and "state" (= *societas*)<sup>301</sup> and also the double sense of "state" is known.<sup>302</sup>

<sup>295</sup> A.a. 579;0., Vollgraff, Tauschungen, Following35. Lancizolle, Vollgraff calls the modern concept of the state a "mystical thought-thing", since in reality there are only states (= *stancle*). Cf. our remarks on the meaning of the conservative polemic. against the concept of the "common good" in the section of2. this chapter and below. 365.

<sup>296</sup> Typically Haller, Restauration, I, 444ff. Cf. Hailer's objections to Bodin's definition of the state, loc. cit. 464. Jarcke means the same as Haller when he writes that the state is not exclusively family or society, but "a societal relationship which embraces and incorporates both forms" (Verm. Sehr., III, 93). This does not mean that the state is something more and something different from society, but only that it coincides only with that society (and is thus a state in the pre-modern sense) which consists of families; if, on the contrary, society consists of individuals and if the dissolution of the *societas civilis* is complete, then *this* society can only be opposed to a state in the modern sense.

The term "state" is not a synonym for *societas*. Jarcke, by the way, uses the term "state" synonymously with *societas*, when he z. He describes the patrimonial and landed estates, for example, as "perfect states" (= *societates perfec tae*) (loc. cit. 48)0.,. Synonymously, he also uses the terms "society" and "perfect state".

„social constitution" and „republic"0., (= *res publica*), a. a. 56,57.

<sup>297</sup> Jarcke, op0.,. cit, 172.

<sup>298</sup> Marwitz, II, 2, 58. Marwitz uses synonymously the terms "republic," "commonwealth," and "state," loc. cit. 68ff., cf. 117, where "republic" or "commonwealth" means as much as limited monarchy and static constitution.

<sup>299</sup> Theorie du Pouvoir, I, =1,9 Oeuvres, III, 94.

<sup>300</sup> See above chap. II, para. b4.

<sup>301</sup> See, for example, Burke, Reflections, Works, III, 310,361.

A vivid comparison of the pre-modern and the modern concept of the state from a conservative point of view is offered by A. Miiller, who, by the way, uses the terms "state" and "state".

„state" and „society" are used<sup>303</sup> synonymously when he <lurches> the former to the latter.

*societas civilis* as "the intimate union of all the physical and spiritual needs, of all the physical and spiritual wealth, of all the internal and external life of a nation" or as "the totality of human affairs, their union into a living whole".

will.<sup>304</sup> After Millier reminded us of the etymological relationship between "booth" and

He reformulates the topos of the Aristotelian tradition and says that the "complete man" can only be formed in so far as he is in a state and has a state; due to his "personal state", i.e. the "state of the person", he can only be formed in so far as he is in a state and has a state.

In the "concept of his relation to his fellow men", man *is* in a state; in his "objective state", i.e. in the "concept of his relation to things or his property", he *has* a state. From this two-dimensionality of the full human being, the hierarchical multidimensionality of the real state arises: for every full human being is the head of a state and at the same time a member of such a state, so that in the organic state, which consists of infinite states, "no one is absolutely free, no one is sovereign". It is just the opposite with the modern state, and therefore „the meaning in which the present dominant theories use the word state is an "inauthentic and figurative" one. For here the organic division of the state into states or *stancle* is leveled and in its place a previously unknown concept of sovereignty is put. The aforementioned state theories did not want "a state within a state, i.e., they did not want a state as a system of states to be valid"; their state was "a completely unconditional sovereign being. Here

We encounter the "pure state, the archetype of the state, in which, according to the teachings of the time, all individual states and *stancle* should perish"<sup>305</sup>. This downright

The ideal-typical comparison of the two types of state leaves nothing to be desired in terms of clarity.

In their abhorrence of the Damonian brutal figure of the modern state.

<sup>302</sup> See, for example, Coleridge, Church, IX, X = Coll. Works, X, 77,82.

<sup>303</sup> S.e.g. Elements, 40,50.

<sup>304</sup> A. a.0 . , II = P. .27,33 Aris does not see this, who obviously- like some other

The commentator is also not clear about the ambiguity of the concept of the state in conservative theorists and, thinking exclusively of the modern state, rejects Muller for creating a "theory of the state without the state" or for failing to grasp the legal personality of the state (Millier, 64). Muller himself makes the opposite mistake, when he keeps exclusively in mind the pre-modern concept of the state and, on the basis of this, does not consider the legal personhood of the state.

liberal view that the state is a necessary obel (Elements, II = p. 23).

„The necessary "obel" here, however, is the government or the state bureaucracy, not social life in general.

<sup>305</sup> Of necessity, 171f., (172, 176.

conservatives sometimes go so far as to deny the state as a political organization of the community any ethical value at all. In doing so, they (tacitly) renew the Augustinian tradition and argue like some scholastics<sup>306</sup>: the state is something *merely* profane, a product of the fall of the Spirit, and therefore it must submit to higher spiritual authorities (i.e. concretely: the commandments of the Church). Thus Fr. Schlegel writes that the state is based "on the imperfection of natural law" and exists *merely* to secure the peaceful conduct of worldly affairs;<sup>7</sup> Since the worldly affairs with which the state had to deal were often opposed to the spiritual final purpose, the conclusion was obvious that "the spirit of Christianity in political terms" was "a general opposition to... the state in general"; "the state *must* finally be completely destroyed."<sup>30</sup>

disappear and are completely absorbed into the church; only the family remains until finally

also the whole human race... becomes one great family<sup>308</sup>. But until the realization of the universal spiritual purpose through the equally universal spiritual institution of the church, there must be a state, and if one at all, then rather a good one than a bad one. For the state is indeed an "invention of Nimrod" - and then it is the "anti-state" or the "ever-hungry and all-devouring Leviathan" - but at the same time it can also be "the first counter-institution against Nimrod! At the same time, however, it can also be "the first counter-state against Nimrod", if peace and justice prevail in it; such a state clients forces for higher and more distant purposes, the "anti-state", however, "seeks only the greatest accumulation of material power or the greatest increase of absolute power"<sup>309</sup>. The Anti-State, then, fills in with the modern state, which has devoted itself to this world; and if Schlegel describes the retreat of the "negative,

If he demands an exclusively secular state before the state that is "based on a divine positive," he expresses the desire for the abolition of the modern sacred state. He thinks *it* is dangerous to set this state as an absolute value and to strive for it with corresponding zeal, but he also states that at present there is a confusion of concepts, due to which the bad state imperceptibly takes the place of the good one<sup>310</sup>. From the point of view of his theological questioning, Schlegel sorrit the difference between pre-modern and modern.

<sup>306</sup> See above chap. II, para. 4b.

<sup>307</sup> Koiner Vorl., X- XII = Werke, XIII, 121, 143, 157, 169. In other places, the same disparagement of the state is given a culturally aesthetic twist from the perspective of higher spiritual goals, see e.g. Vorl. iiber die neuere Gesch., XIX-XXI = Works, VII, 396f

<sup>308</sup> Fragments . . . , Works, XXII, in so far 47,224. Maistre is given right (232).

<sup>309</sup> Signature. . . II= Works, VII, 547ff. Cf. Fragments, ...Works, XXII, 6f, 7.

<sup>310</sup> Signatur... , III = Works, VII, 554f

The difference between a modern and a modern state is no less clear than *it was* for Muller on the basis of sociological categories and the problem of sovereignty.

In other parts of the conservative spectrum, attempts were made to take account of the separation of state and society, but to place the narrower concept of state, which had been formed in and through this separation, in a broader framework together with the new concept of society, and in this way to make the (partially) recognized separation irrelevant again or to assign it a merely technical value. This is how Stahl's position can be summarized, who - knowing the revolutionary origin and use of the new concept of society -<sup>311</sup> wants to admit the distinguishability, but not the separability of state and society; for the political and social spheres "interpenetrate everywhere without a sharp line of demarcation and are everywhere in interaction" within a broad

rich transnational totalitarianism<sup>312</sup> This "community for the totalitarianism of

At the same time, however, he also speaks of a state "in the narrower sense," which is understood in its "difference" from society (as the sum of all communities that "do not serve both for common domination according to higher thoughts and for mutual satisfaction of needs"). Following the conservative tradition, Stahl's doctrine of the state does not revolve around the narrower but around the broader concept of the state, and therefore it also wants to be a doctrine of society and of the community of states, i.e. it wants to encompass<sup>313</sup> "the actually political, the social and the international field" at the same time. The traditional trait is also noticeable in the fact that Stahl does not define the state exclusively in terms of sovereign power, but also and above all in terms of the administration of law and justice; Since the state is not "a man-made thing, but a thing ordained in the world," its essence lies "first and foremost" in the "administration of the commandments set by God over the human condition,"<sup>314</sup> that is, in the fulfillment of a moral task<sup>315</sup>. In a time when society is becoming increasingly economized, the emphasis on the moral purpose of the state (in the traditional sense) serves to put a stop to such tendencies and, in this containment of society, also to achieve a corresponding containment of the state (in the new sense). Here, the state is not meant to be the last extrapolation of the political, which has detached itself from the social and become autonomous, but rather the traditional unity of all areas of the community. But already the admission of the "distinguishability" of the political from the social, or the

<sup>311</sup> Rechtsphil II., 2,51.

<sup>312</sup> A. a. f0.,52

<sup>313</sup> A. a. 0., 15f

<sup>314</sup> A. a. 132f, 0.,134.

<sup>315</sup> A. a. 0.,131,140.

The fact that the question of such a distinction arose at all shows how problematic and precarious that unity had become in the meantime. This is why Stahl, too, had to run into considerable difficulties in his persistent, often acrobatic attempts at mediation, for example when, despite recognizing the moral purpose of the state, he left its ultimate realization to the individual and thus let the fatal separation of private and public spheres in through the back door<sup>316</sup> - although, as we shall see in a moment, he did not want to accept either its presuppositions or its implications.

The conservative rejection of the separation between private and public spheres follows with inner necessity from the rejection of the sacral modern state. For the latter created or demanded such separation precisely because it regarded the world as the exclusive space for the development of its sovereign activity and demanded of the subject only the preservation of legality, while it left the search for salvation or the realization of morality to the conscience of the individual. Thus, when conservatives deny that the state (in their sense) has to take care only of worldly affairs, and when they affirm the moral task of the *societas*, they mean that there is no private morality distinguishable from legality and no private search for salvation, but that morality and salvation are equally preserved or at least mediated by public institutions; the individual must be all-sidedly anchored in the state if the state is all-sided, that is, if it coincides with the *societas*. Private and state law

are identical in essence, because both are found in divine law - and precisely in the With regard to this, the moral task of the state is defined<sup>317</sup>. Stahl, too, connects his concept of the public with the moral essence of the state and thus questions the modern binding of the public to the state (in the new sense); for if the public and the power of the state coincide, then the latter must derive from the public par excellence, i.e. from the people. In this way Stahl wants to avoid Haller's mistake, who declared state power to be a private matter of the most important, in order not to have to derive it from the people as the ultimate point of reference and bearer of the public; in doing so, as Stahl rightly remarks, he had adopted the same concept of the public as the revolution<sup>318</sup>. Thus, E. L. v. Gerlach accused his old mentor Haller that in his otherwise justified struggle against the enforcement of the public or the (modern) state, he was fighting for private rights and the right of the state.

- without being clear that concepts such as "public" and "private" are not Germanic and Christian, but "pagan, Roman and Christian".

<sup>316</sup> A. a. O., 136f

<sup>317</sup> Millier, *Elemente*, II = p. 24ff.; *Von der Notwendigkeit*, 179.

<sup>318</sup> *Jur. phil.*, I, 565f; *parties*, 295.

republican"; he, Gerlach, "no longer says: the king is a rich private man', but 'the private man is not a private man, but a little king': 'the private man is not a private man, but a little king,' and in this way I do not merely erase the opposition between 'private' and 'public, publicus' ... - I erase the appearance of egoism, which has done so much harm to your restoration of political science"...<sup>319</sup>.

To the same problem belongs the question of the relations between the state and religion. The rejection of the separation of the private and the public implied a plea for the closest intertwining of religion and the state (*societas*), since the (modern) state, which allowed the aforementioned separation, assigned religion (and morality) to the private sphere; if, on the contrary, religion (and morality) necessarily constituted an open matter in a state under God's law, then nothing really remained that could be left to the conscience of the individual as an individual. The subjection of the *societas* to divine law had to prohibit, theoretically and practically, the privatization of religion and therefore also the separation of the private and the public, which arose not least in the struggle for the privatization of religion. The conservatives remember that the rise of modern statehood was partly accompanied and partly demanded by the declaration of religion as a private matter, and this spontaneous transposition of them into the situation and the problems of the sixteenth century makes it understandable why, three centuries later, they have to defend with the same emphasis views that were held at that time against the "Machiavellians".

religion is<sup>32</sup> not an instrument of political domination, for example.<sup>0</sup> In their In the eyes of the conservatives, the state (*societas*) and religion (church) are constituent parts of a unified whole<sup>321</sup>; "education, civilization, art, science, commerce, family, state - all belong to the kingdom of God<sup>322</sup>." Only through this intertwining of *societas* and religion could the sanctioning of social institutions be achieved that was to<sup>323</sup> guarantee their permanence; and the divine origin of the authorities also found its visible proof in<sup>324</sup> this intertwining. Thus, as conservatives often point out, the fate of religion remains closely linked to that of politics, i.e., opinions on religion go hand in hand with certain political views (and vice versa), and theological errors entail political calamities (and vice versa)<sup>325</sup>.

<sup>319</sup> *Nachlaß*, I, 29; II, Cf658.. Brunner, *Wege*, 98f, 147.

<sup>320</sup> See the typical argumentation on this in *La Mennais*, *Essai*, I, chs. 2-3.

<sup>321</sup> Burke, *Speech on the Petition of the Unitarians* (1792) = *Works*, VII, 43.

<sup>322</sup> E. L. v. Gerlach, *Königreich*, Sp. 387.

<sup>323</sup> Maistre, *Considérations* . . . , V = *Oeuvres*, Sp. 41.

<sup>324</sup> Baader, *Schriften*, 381, 376 (citing Bonald).

<sup>325</sup> Bonald, *De l'union religieuse*.....*Oeuvres*, VII, 170; *La Mennais*, *Essai*, I, 394; cf. Burke (already 1765), *Works* I, 4f Cf.



Tolerance means religious indifference and thus the degeneration of the attitude which the divinely sanctioned

institutions<sup>326</sup>; in a certain sense, even religious disputes that are

The same premises mean that the confrontation between the two is to be preferred to<sup>327</sup> the tolerant egalitarianism. On the basis of the same premises, the conservatives reject the independence or neutrality of science. If the *societas* is based on religion and thus the separation of private and public is impracticable and unthinkable, then no scientific activity can take place apart from the all-encompassing life of the *societas* and apart from religion or science.

Theology exist and flourish<sup>328</sup>. The unity of all ideological forms under the agide of religion soil correspond to the unity of all aspects of the political and the social within the *societas*, which as a whole is under the agide of the God-given idea of law. Conservatives know that the separation of the arts and sciences from religion is<sup>29</sup> a historically recent phenomenon,

which went<sup>330</sup> hand in hand with the likewise lamented "highly dangerous" separation of the spiritual and the learned classes.

The concrete meaning of the conservative adherence to the inseparability of society and religion was largely the same in the nineteenth century as it had been in the sixteenth: namely, the binding force of divine law (in its traditional interpretation) was to be asserted for the power of government and thus an insurmountable obstacle was to be placed in the way of the sovereignty of the modern state. The absolutist or revolutionary "despotism" is now contrasted with Christian "love" by the conservative side, e.g. by Baader, which alone can<sup>33</sup> unite the *societas* into a harmonious whole.<sup>1</sup>

Despotism" and "love" or modern statehood and religion are mutually exclusive, i.e. the rise of one means the decline of the other and vice versa. Cortes wanted to present this relationship as a "ley de la historia", which he collapsed into a parable: when the thermometer of religion rises, the thermometer of political repression falls, and vice versa; the social surveillance of religion since the beginning of modern times has therefore been accompanied by a tremendous increase in political tyranny.

<sup>326</sup> See especially Bonald, *Reflexions philos. sur la tolerance* . . . Oeuvres, VII, esp. 154f.

<sup>327</sup> See, for example, Coleridge, *Lay Sermon*, Coll. Works, VI, 199.

<sup>328</sup> Muller, *Elemente*, II = p. 32; Cortes, *Obras*, II, 500f.; cf. L. v. Gerlach, *Denkwürdigen*, I, 402.

<sup>329</sup> Baader, *Writings*, 84.

<sup>330</sup> Schlegel, *Die Entwicklung d. Phil. (Köner Vorl.)*, XI = *Werke*, XIII, Cf. 148.

Coleridge, *Talk* (21. 4. 1832), p. 158: „There have been three silent revolutions in England: first, when the professions fell off from the church; secondly, when literature fell off from the professions; and thirdly, when the press fell off from literature."

<sup>331</sup> Baader, *Schriften*, 58ff.

<sup>332</sup>The unpleasant thing for the conservatives was that The unpleasant thing for the conservatives, however, was that in the face of the collapse of the religious basis of society, they were forced to replace what was now lacking in religion with the strengthening and rational organization of political coercion. It seemed wise to Bonald to replace his statement that in each society "pouvoir" was divided between "religion" and "gouvernement" in different proportions with the advice: "Si le frein de la religion se relache, il faut renforcer l' action du gouvernement." <sup>333</sup>And Baader, who had contrasted love or religion and despotism in such an emphatic way and, moreover, had rebuked those conservatives who did not believe in religion and love firmly enough and therefore took "their recourse to the desperate means of the absolute rigorism of political power," could in his turn

The government's power<sup>334</sup> must be strengthened in order to ward off the threat of disintegration of the partnership.

After 1789, it was still relatively easy to imagine the unity of society and religion on paper, but it was much more difficult to maintain or restore this unity in practice after the changes in the relationship between church and state, which had occurred almost everywhere in the meantime, in favor of the former, as well as after the confessional split, which was also reflected in the conservative camp. The conservatives initially disagreed on the form and form of the often desired ecclesiastical and papal interventions.

tion in state affairs<sup>33.5</sup> Second, the principle of the unity of

State and Church are sometimes subordinated to, or even called into question by, considerations of expediency, when the expected consequence of this unity is either the

Submission of the church to the supreme power of the state <sup>336</sup>or the state's

The preference of one denomination at the expense of the other was<sup>337</sup> And finally, the opposition between Protestants and Catholics mul3te the conser3.

vative position additionally weakened. The common hostility to the revolution and the priority of the struggle against it forced the conservatives to at least temporarily set aside their confessional preferences on the national and international level, but the predominance of the Catholic element within the conservative camp as a whole mulled the concept of the "Catholic".

<sup>332</sup> *Discurso sobre la dictadura*, *Obras*, II, ff; 316 cf. already Baader, *Schriften*, f160. , 268f.

<sup>333</sup> *Pensees*, *Oeuvres*, VI, 26.

<sup>334</sup> *Writings*, 73, 263.

<sup>335</sup> On this question, there were differences of opinion even between the bried Bonald and de Maistre (see Moulinie's analysis, Bonald, 310ff., 416f. ), not to mention Montlosier's vehement rejection of all ultramontanism and Jesuitism (*Memoire*, esp. 74f.). Schlegel sketches a middle position in his *Köner Vorlesungen*, XII = *Werke*, XIII, 171. On the conflicts between Gallicanism and ultramontanism at the time of the Restoration, see. Mellon, *Polit. Uses*, ff. 112

<sup>336</sup> Thus, for example, La Mennais (see Gurian, *Ideen*, f142.) or E. L. v. Gerlach (*Nachlaß*, I, 113).

<sup>337</sup> Thus, for example, Radowitz, who even grants persecuted Catholics a passive right of resistance (*Ausg. Sehr.*, II, 378; III, 18).<sup>7</sup>

Conservatism in general to (politically interpreted) Catholicism rather than Protestantism. This was reflected in the conservative genealogy of the revolution, i.e., in the frequently expressed view that "reformation ... is logically, morally, and factually one and the same thing with revolution. with revolution is logically, morally and factually one and the same"<sup>338</sup>. The reason for this was that Protestantism had made the conscience of the individual the judge of religious questions, so that the transfer of the same principle to the socio-political sphere could<sup>339</sup> not be avoided; He had given nourishment<sup>340</sup> to human pride and hubris, placed private religion next to private right and private benefit<sup>341</sup>, and unconditionally recognized the modern principle of the state, from which a "Protestantism of the state" developed, which divided the *civitas christiana* into sovereign states, while the "Protestantism of knowledge" brought about the dissolution of the state.<sup>2</sup> The memory of the writings and impact of the Protestant "revolutionaries" of the early modern period completed this ghostly picture.<sup>34334</sup> On this particular point, of course, Protestant conservatives had a relatively easy time of it, since they could<sup>344</sup> point to the Catholic monarchies of the sixteenth century and the alleged Jesuit origin of the doctrine of popular sovereignty. Moreover, they could claim that Protestantism, in contrast to Catholic theocracy, which easily turned into rebellion against the crowned heads, and also in contrast to patriarchalism, which disintegrated and dissolved authority,<sup>5</sup> Nevertheless, the open Protestant break with a long religious tradition was difficult to justify in the eyes of conservatives<sup>34</sup>. Stahl undertook this justification with the argument that in the church the most important thing was not the historical law or the traditional constitution, as it was the case in the state, but a supra-historical and eternal legitimacy<sup>346</sup>. This was the natural revolutionary view in politics, and therefore neither such an argument nor the assertion that rationalism was not part of the essence of Protestantism<sup>347</sup> was suitable to win conservative Catholics for the Protestant side. Rather, the opposite occurred: conservative Protestants felt that

<sup>338</sup> Thus Gentz in a letter to Brinckmann dated =8.11.1824 Briefe, II, 342.

<sup>339</sup> Bonald, *De l'unité religieuse*, ...Oeuvres, VII, 187; cf. Moulinie, Bonald, 181ff.

<sup>340</sup> Baader writings, cf. 136,71.

<sup>341</sup> Miiller, *Elements*, XV = p. 183.

<sup>342</sup> Schlegel, *Phil. d. Gesch. XVII = Werke*, IX, ff, 387392ff.

<sup>343</sup> Radowitz, *Fragmente*, II = *Ausg. Schriften*, III, 111.

<sup>344</sup> Leo, *Sendschreiben*, 41f.; Stahl, *Protestantism*, 24ff., *Parteien* 109., 61; cf. Scheel, *Berl. Pol. Woch.*, 35.

<sup>345</sup> Stahl, *Protestantismus*, sff10, 43.

<sup>346</sup> A. a. fO., 77.

<sup>347</sup> Leo, *missive*, 124f.

They were disturbed by "rationalist" or "constitutionalist" missteps of their confessional and like-minded comrades, and therefore they developed certain Catholic sympathies, even being able to "calmly bear"<sup>34</sup> the suspicion of Romanism.<sup>8</sup>

The demanded unity of *societas* and religion was to limit the sovereignty of the modern state not only from within but also from outside. For it kept alive the memory of the pan-European *civitas christiana*, which was admittedly dead in fear, but was nevertheless rediscovered during the "general European civil war"<sup>349</sup> that broke out in 1789, with the very practical aim of establishing the right of intervention against revolutionary or revolutionizing states. Obviously, the right of the people, which had been developed since the 16th century and was more or less based on the modern principle of the state, was not suitable for such a conception, since, according to the conservative view, the order and tranquility that had prevailed 1789 before was "bloß negative" and the equilibrium that existed at the time was "negative".

was<sup>50</sup> "bloß mechanisch" 3. The inclination toward counter-revolutionary Christian universalism arose and grew in parallel with the political and military bias of the European crowns against revolutionary France<sup>351</sup>. Burke spoke of the "great Christian Commonwealth", he praised "the Christian World and the Republic of Europe" or "the Community of Europe", which was based on common religion and common institutions "drawn from the Germanic custody" 352 - and demanded that the "Christian" states intervene directly in France in order to provide help to the "healthy" part of this nation and at the same time to protect<sup>353</sup> themselves preventively. Bonald also recognized the counter-revolutionary powers' right to intervene, saying that "un nouveau droit des gens" and "la republique chretienne" would come about through<sup>354</sup> the pan-European solidarity of the counter-revolution. This new right of the people was obviously intended to overcome what Schlegel had called the "bloß mechanisch" character of the system of sovereign states by subjecting the states to certain rules of conduct which, as Gentz explained, the entire "European Republic" would have to follow; the principle of non-intervention would therefore be "wrong in its unbounded generality" if the internal development of a state threatened the balance of power of the European republic; although the possibility of an abuse of the right of intervention

<sup>348</sup> Thus E. L. v. Gerlach, *Aufz. I*, cf. 419,244,256 (über die Köner Ereignisse); *Nachlall*, I, (31 Stahl's Fehler), II, 796,938.

<sup>349</sup> After an expression by Fr. Schlegel, *Phil. d. Gesch.*, XV = *Werke*, IX, 350.

<sup>350</sup> Thus Schlegel, *Signatur*, ...I = *Werke*, VII, 500.

<sup>351</sup> Beik, *French Revol.*, 109.

<sup>352</sup> *Letters on a Regicide Peace*, I u. IV = *Works*, V, 318ff. u. VI, 30,61.

<sup>353</sup> Letter to a Member of the Nat. A.ss. *Works*, IV, 16f. Cf. his excerpts from Vattel, IV, 471ff.

<sup>354</sup> *Observations*, ...Oeuvres, VII, f664., 666.

The right of intervention could not be ruled out, but it had to be accepted.<sup>355</sup> This unapologetic conservative claim to the right of intervention with reference to the higher rules of the *respublica christiana* was understood as a practical expression of the opposition to the *Staatsrasonslehre*, which saw in the state the highest and therefore inviolable good. And since this *Staatsrasonslehre* was seen as the pinnacle of Machiavellianism and political amorism, from the conservative point of view the simultaneous advocacy of the right of intervention and the unity of ethics and politics did not constitute a logical or moral contradiction. Burke and Bonald, two prominent advocates of the right of intervention, emphasized that the principles of politics were essentially the same as those of morality, that politics was the morality of governments just as morality was the politics of individuals.

miisse<sup>35</sup>.<sup>6</sup>When Burke describes the "Machiavellian politicians" and the "Machiavellian poli

cy"<sup>357</sup>, when Radowitz rejects the maxim that the end justifies the means in the same breath as the *Staatsrasonslehre*,<sup>8</sup>when Stahl rejects<sup>35</sup> the modern

The first act of the drama is<sup>359</sup> then repeated *ipsis verbis*, <las in the 16th century>. had begun. In the last act, or rather in the last scene of the same drama, E. L. v. Gerlach still reproached Bismarck, the foreign politician, with the ten commandments being intolerable to<sup>360</sup> him. As early as 1853, he had admonished him to "hold fast in relation to Austria that the world is not divided into states, as is usually the case, but disintegrated into parties"<sup>361</sup>. Because of the adherence to the ideal image of the *civitas*

*christiana*, some conservatives had to attach greater importance to horizontal or ideological divisions than to vertical or state or national ones. Ironically, revolutionary social democracy did exactly the same thing in its struggle against bourgeois nationalism, and, moreover, it invoked the unity of ethics and politics, even if it associated with these terms quite different meanings.

From the conservative conception of *societas* described above it becomes clear what the conservatives had to criticize in the modern state, which had been completed by the revolution. If the structure of the *societas* was monistic (because of the absence of a qualitative difference between governmental power and the social body, *politi*

<sup>355</sup> Gentz, *Ober den Ursprung*, 19-22, cf. 151. f. as well as *Briefe*, III, 1, 245 (Also Schlegel demands „Gehorsam, Disciplin und Subordination in dem geordneten christlichen Staatensystem", *Fragmente* (1820) = *Werke*, XXII, cf. 5, 14.

<sup>356</sup> Burke, *Letters on a Regicide Peace*, I = *Works*, V, 325; cf. already the after 9. 11. 1771 written letter to W. Markham, *Corr.* II, Bonald, 282. *De la phil. et de la morale*, *Oeuvres*, VII, 111; *Observations*, ... *Oeuvres*, VII, 664.

<sup>357</sup> *Reflections*, *Works*, III, 244, 338.

<sup>358</sup> *Fragmente*, I = *Ausg. Schriften*, II, 387, 396.

<sup>359</sup> *Jur. phil.*, I, 330ff

<sup>360</sup> *Rec.*, II, 276

<sup>361</sup> *Nachlafi*, I, 303.

While the structure of the state was dualistic (because of the fundamental separation of state and society, political and social, public and private) and at the same time monocentric (because of the unified legislation and administration), the structure of the polity that emerged from absolutism and revolution was exactly the opposite: it was dualistic (because of the fundamental separation of state and society, political and social, public and private) and at the same time monocentric (because of the unified legislation and administration). Thus, the root of the obel lay in the growth and, at the same time, in the autonomization of governmental power and its administrative apparatus. In its opposition to the "organic" forces of society, the state appears to conservatives as a "machine" (this is the stereotypical expression) and they consider "mechanism" and "despotism" as parallel phenomena<sup>362</sup>; comparisons inspired by Napoleonic centralism are also made.

with the "Asiatic despotism" or the "old orientalism" did not have was lacking<sup>363</sup>. As <las counterpart> of the *societas*, the state is *eo ipso* a violation of its right, or more precisely: it had to violate its right in order to become its counterpart. For this right had consisted in the "*suum cuique tribuere*", which meant "the persistence of a certain juridical subject with a certain juridical object"; in the modern state, however, all rights are juridical objects not of a concrete juridical subject, but "of a supposed general and all-embracing subject, of a great invisible thought being, which is called state" and in which a "caste of officials" appears and acts.<sup>364</sup>

The object of the state and the concomitant encroachment on existing rights is now based on both ideal and real foundations. Its most important ideal foundation is the theory of a state purpose, whose exclusive bearer and interpreter should be the state, which is opposed to the *societas* and to which all private rights have to submit without further ado. As a result of the state's detachment from divine law and its secular orientation, this state purpose is usually defined as the satisfaction of all, even in violation of existing rights. The theory of the purpose of the state and the related doctrine of welfare thus imply absolute state power, while the "constitutional state," <whose exclusive purpose is supposed to be "to demand the divine order in human affairs," is distinguished from communal purposes.

<sup>362</sup> See, for example, Brandes, *Zeitgeist*, (50; E. L. v. Gerlach, *Aufz.*, I, 246.

<sup>363</sup> Gorres, *Rhein. Merkur*, 101; Marwitz, II, 1, 83. As is well known, many (also Prussian) conservatives see in the Prussian state of the 18. century the prototype of the Napoleonic one, see, for example, Brandes, *Zeitgeist*, 50(, 55; (Anonymous), *Spain*, 60 note; E. L. v. Gerlach, *Aufz.*, I, Ober 305. den napoleonischen Staat typisch Jarcke, II, cf. 390., note of this 16 chapter.

<sup>364</sup> Thus argues Mi. iller, *Von der Notwendigkei,t* 175( Cf. Marwitzens *Kritik am Allgemeinen Landrecht*, II, 2, 83.



The conservatives, reviving the old standish polemic against the Roman law<sup>372</sup> and emphasizing<sup>373</sup> the fundamental distinction between law and law in various forms, claim that the general legislation "absorbs all the diversities of rights and liberties,"<sup>374</sup> that it is a dead letter and not a fresh outflow of the struggle of living forces with each other.

380 Jarcke, *Verm. Schriften*, III, 136f.



When it comes to this opinion, the conservatives will disagree - not least because, depending on the concrete situation and temperament, they would have to assess the possibility of using the state to defend conservative bastions<sup>381</sup> differently. The same E. L. v. Gerlach, who did not want to know anything about a "legality without love and attitude", subsequently wrote that he was nevertheless aware of "what a weapon - and therefore reality - abstract legality is in our time and how 'we' should make use of this weapon"<sup>382</sup>. Thus the

Conservative statements on the state range from Haller's rejection, which goes so far as to deny the monopoly of legal power to the prince or the state<sup>383</sup>, to Stahl's fundamental affirmation of the idea of the state, "which the feudal party rejects as revolutionary or as a dead abstraction"; in contrast to the Standi

Stahl also believes that it is not the stangle that makes up "the whole position of man", but that the higher community is the nation, and even states the necessity of an - admittedly "organic" and not "bureaucratic" - "community".

Centralization" in the face of the dissolution of the old community<sup>384</sup>. Although it was self-evident to conservatives as a whole that the continued existence of the nobility could not be reconciled with the "authority" of a central government, some of them had to realize that "the security of the citizens of a state now rested on"<sup>385</sup>

the unity of the legislature and its administration. If, in this diversity of conservative attitudes toward the state, we were to single out a common element, admittedly not intellectual but rather atmospheric, we could perhaps recall Radowitz's remarks about the journey by train, which he felt affected the personal independence and freedom of movement of the traveler and had, in spite of this, now become a "necessity"; and then he adds melancholy: "So too the modern state"<sup>386</sup>.

#### *b. The conservative idea of the nation*

The conservative idea of the nation differs from the revolutionary one to the same extent and in the same sense as the ideal type of the *societas civilis* differs from that of modern statehood. The conservatives are aware that the modern state - if not in its absolutist beginnings, then at least in its revolutionary completion - brings into being a certain conception of the nation, and that the advocacy of the former is accompanied by a

The conservative models of the state and the nation are also aligned. The conservative models of state and nation are just as closely aligned. If the modern state and the modern nation are based on the idea of a sum of individuals who are politically equal and at the same time independent of the state, i.e. free of partial ties, the conservative idea of the nation, like the idea of the *societas civilis*, is based on the assumption of a hierarchical order in which the individuals come into contact with the respective higher levels or with the top of the hierarchical pyramid only by means of their corporation or their *oikos* leader. The conservative idea of the nation aims first of all to

It is necessary to emphasize this in order to dispel the widespread misconception that the conservative idea of the nation has a necessary and unilinear relationship to the "romantic" nation. This must be emphasized in order to dispel the widespread misconception that the conservative idea of the nation stands in a necessary and unilinear relationship to the "romantic" concept of the people, as it was developed by Herder, etc. In reality, the distinction between the "rational" and the "romantic" concept of the nation coincides with the distinction between the "rational" and the "romantic" concept of the nation. In reality, the distinction between the "rational" and the "romantic" concept of the nation<sup>387</sup> does not always and everywhere coincide with the distinction between the revolutionary and the conservative concept of the nation; the conservative concept of the nation is in fact ambiguous, and in each case allows that aspect of it to come to the fore which could most severely affect the revolutionary concept. Thus, it denies the constitutive importance of the main features of the "romantic" concept of nation or people (common language, customs, origin, etc.) when it wants to emphasize the dynastic origin and support of the national union against the idea of popular sovereignty, while, conversely, it is sympathetically opposed to this same concept when it wants to oppose the revolutionary universalism of human rights. The conservative idea of the nation is no less ambivalent about the "rational" concept of the nation: to the extent that absolutism regards the nation as a dynastic creation, the conservatives must approach the "rational" concept of the nation, but they turn away from its interpretation in the sense of modern statehood, since here the independence of the individual from the state was postulated with the elimination of the *oikos*-leaders and all *pouvoirs intermediaires*. In general, it should be noted that the national idea did not necessarily arise from the archetype of conservative ideology. The conservatives discovered the nation as a greatness with its own historical dynasty only in their struggle against revolutionary universalism. But if revolutionary ideology glorifies the nation as the overarching entity that levels traditional hierarchical differences, then conservatives, in keeping with their fundamental pre-state outlook, tend to defuse the nation's revolutionary potential <by disparaging the idea of the nation altogether from the higher view of *civitas christiana*. Thus, in their texts one can find statements for the ("organic", i.e., classically structured)

<sup>381</sup> See above section 3cd of this chapter.

<sup>382</sup> NachlaB, I, cf410,412.

<sup>383</sup> Restoration, II, ff.98

<sup>384</sup> Parties, 329; Rechtsphil., II, 2,29et seq.

<sup>385</sup> Gentz, Fragments, 63,5.

<sup>386</sup> Fragmente, I = Ausg. Schriften, II, f356.

<sup>387</sup> On this distinction, see Lemberg, Nationalismus, I, 168ff.

nation and against (natural law-revolutionary) universalism as well as those for (pre-state or pre-national) universalism and against the (modern egalitarian) nation.

Let us now take a closer look at the above-mentioned aspects of conservative national thought in their ambivalence. First of all, it should be mentioned that the conservative interest in the question of the nation was awakened not <by sympathies for pre- or friihromantic, politically rather harmless folklorism, but in a much more dramatic way, namely <by fear of the uncanny energy of French revolutionary nationalism. And to the extent that experience with it made the inner connection of modern nationalism with popular sovereignty, the centralized state, and with patriotism as an attitude that, on the basis of new loyalties and invoking new instances, eliminates or at least relativizes the traditional social differences<sup>388</sup>, the conservatives, in turn, did not initially resort to the "romantic" concept of the people, but rather stuck to the pre-division of the *civitas christiana*, within which the nations coexist, whereby they <bound to each other by their common civil constitution and at the same time protected from the loss of their still unreflective individuality.

are preserved- This individuality is <limited by no state boundaries>.  
389

and does not want to establish any. The borders that actually exist are not due to the action of collective and national forces, but to personal and dynastic ones. At a time when "the most formidable force of the present, nationality, had become the most dangerous weapon in the hands of the enemies of the legal order,"<sup>390</sup> it seemed an urgent task to challenge the necessity of its connection with the doctrine of popular sovereignty by arguing that the prince creates the nation and not vice versa, just as the head of the household creates the family and is not chosen by its members. As *pouvoirs constituants*, the people and the nation were only fictions<sup>392</sup> because of the factually small number of politically relevant persons in each state<sup>391</sup>. For Gentz it was a "proposition hitherto unknown to constitutional law" and a doctrine disproved by history that equality of origin, language and religion conferred "the inalienable right" to "form one and the same political whole; Such factors represented "partly uncertain, partly very loose points of unification," and a realization of political unity on the basis of them had never been seriously attempted even in times when the idea of that unity "was frequently used as a tool for the exaltation of the community and for the

The people of the world were used for the overthrow of all existing power structures"<sup>393</sup>. Even if it is conceded that unity of blood, language, custom and tradition is particularly characteristic of a people, it is denied, on the other hand, that this natural people is a "juridical person", "which had a will in a legal sense "<sup>394</sup>; in other words, there is the "natural" and the "legal" concept of the people, which is based on the unity of political power and is alone decisive in<sup>395</sup> legal matters. For the very reason that several peoples can exist side by side in a state, the will of the state, if it is to be uniform and stable, cannot be derived from them in their specificity. If the "spirit of the states" is to remain the "essentially universal church of God," then the principle must be affirmed against <la's principle of nationality, "that the state is rather and more than the nation, which only arises from the state" and is in itself, "like all mere natural history, something nebulously blurred, which is for this very reason suitable to the pantheistic spirit of the age<sup>396</sup>." It should be added that some conservatives, in their struggle against <la's principle of nationality, "are not aware of the existence of the state, but of the nation. the principle of nationality, some conservatives, in their struggle against the principle of nationality, denied the existence of purely racial nationalities and the criterion of race altogether, and said that nationalism "loosens the European nations back into races" and thus "leads to the standpoint of barbarism. zuriick<sup>397</sup>.

The principles on the basis of which revolutionary nationalism could have a leveling effect within each nation simultaneously claimed universal validity for themselves. This seemingly paradoxical liaison of nationalism and universalism was, however, logically necessary. Since the revolutionary conception of the nation postulated the independence of the individual from the nation and the state, the individual had to be freed from all the ties that were constitutive of the *societas civilis*; to this end, however, the individual had to be endowed with rights that would relate to his mere quality as a human being, that is, with rights that were peculiar to all human beings and therefore universal. In the face of this shift from revolutionary nationalism to universalism, conservatives had to fight on two fronts at once, opposing both the leveling effect of nationalism internally to the idea of the nation as a hierarchy and human rights universalism to the reality of national individuals living separately from one another. In their conception, as in the revolutionary one, the national and the international model are coordinated with each other, albeit with the opposite sign: the differentiation of nations within the framework of humanity, the differentiation of the world as a whole, and the differentiation of the world as a whole.

<sup>388</sup> On this connection in general, see Kohn, *Idee*, (9, f203,209,431(

<sup>389</sup> Cf. Meinecke *i.iber Novalis und Schlegel, Weltbi.irgertum*, 71 ff, ff.86

<sup>390</sup> Thus Radowitz, *Ausg. Sehr. u. Reden*, cf. 99,135.

<sup>391</sup> Haller, *Restauration*, I, 511; Marwitz, I, 38(

<sup>392</sup> Rehberg, *Investigations*, £74.

<sup>393</sup> Writings, V, £84, note.89

<sup>394</sup> Thus Jarcke, *Verm. Schriften*, I, 24.

<sup>395</sup> Stahl, *Jur. phil.*, II, 2,164£

<sup>396</sup> Thus E. L. v. Gerlach, *Aufz. I*, 397, cf420. Around the time of the Reichsgri.ind ung, Gerlach doggedly insists on this idea, s. *Deutschland etc.*, 14(

<sup>397</sup> Knight, *Preul3. Cons.*, f62.

appears to them just as natural and inconceivable as the differentiation of states and individuals within the framework of the nation. This is the concrete meaning of the connection Burke makes between "our love of liberty" and "our love of our country" in order to subsequently oppose the universalization of<sup>398</sup> the concept of liberty in its reference to man as such. Thus it becomes common among conservatives to ridicule the "philanthropie moderne" of human rights and to identify it with cosmopolitanism, "pour qui tous les nations ne forment qu'une seule et meme famille"<sup>399</sup>. Against this cosmopolitanism, it is pointed out that law and the state went together, since law was bound to certain localities and to certain cases, the state being the very locality where the cases in question took place<sup>400</sup>. The state of which Muller speaks here is obviously the one in which there is diversity of law and diversity of rights. The modern egalitarian state (Fichte's), on the other hand, is rejected in<sup>401</sup> the same breath as cosmopolitanism (Kant's), which cannot be surprising in view of the logical coherence of these two ideas.

Revolutionary universalism, as the other side of revolutionary nationalism, appeared all the more perverse when it practically appeared on the scene in the form of French political-military expansionism. Conservatives noticed that this expansionism, which conquered old Europe under the banner of universal human principles and values, in reality served not the ideals that had been recognized, but the self-interest of those who invoked them. As Rehberg wrote at the time, the introduction of the French legal system in many conquered territories was "a very powerful means of demanding the spread of the rule of the French people"; the privileged position of the French, even legally, in the face of all the exalted universality of human rights, made it necessary to become French "in order to share in human rights"; thus the imposition of French law was in fact "the surest preparation for the unification of all peoples: but not in the bond of love and unity which was presented in 1789 to all the nations of the world". - <sup>402</sup>In the struggle against this aggressive and leveling universalism, which actually conceals a *foreign* nationalism, the conservatives are now discovering the nation as its very own individuality, whose character cannot be changed at will or by force. That which could not be arbitrarily made and dissolved could not be the dynastically understood nation (the latter was the prime example of the feasibility of the dynasty).

<sup>398</sup> Letters on a Regicide Peace, IV = Works, VI, 99.

<sup>399</sup> Rivarol, Extraits du Journal, Oeuvres, IV, 35, 148.

<sup>400</sup> Muller, Elements, II = p. 30.

<sup>401</sup> Elements, IV = S. 52.

<sup>402</sup> Code, 98.92,

The new nationality was not a nation of the same name (i.e., a nation of the same language, tradition, and customs), but a nation held together by a collective will that was not merely dynastic, but existential and historically preserved. The extent to which conservative minds allowed themselves to be forced, as it were, into this new sense of nationality by French expansionism can be seen in the example of Gentz, of all people, who, as we have just seen, after the disappearance of the Napoleonic nightmare allowed only the dynastic concept of nationhood to prevail, but at the time of the German humiliation by the French armies dreamed of the unity of Germany ("what a great and glorious thought!"<sup>403</sup>) and said: In 1810, he even allowed himself to be temporarily convinced by A. Muller that "language and nationality designate the true and only borders of the individual states"<sup>404</sup><sup>405</sup>. At about the same time, Coleridge took issue with the "false philosophy or mistaken religion" that tried to persuade people "that cosmopolitanism is nobler than nationality and the human race a sublimer object of love than a people" and regarded patriotism as "a necessary link in the golden chain of our affections and virtues"; "in order to be men we must be patriots and patriotism cannot exist without national independence"<sup>406</sup>. The concepts of nation and patriotism were even more emphatic and concrete in Wordsworth's, which was inspired by the Spanish People's War. In the eyes of the poet, who had become conservative, the fighting nation appeared as an organic whole, in which the people and the army could hardly be separated from each other, and the individuals - "gathered together, in a stormy season, under the shade of ancestral feeling" - merged with each other in the school of that "solemn fraternity which a great nation composes"<sup>407</sup> - the basis of national existence is here the common tradition as well as the common rooting in the same soil; hence the deep and spontaneous, if unreflective, patriotism of the peasants<sup>408</sup>. Thus, the nation becomes an almost existential matter, i.e. it is not merely the framework of existence, but its blood and its heart.

However, the conservatives (among them also

<sup>403</sup> Letter to Brinckmann from 18.12.1804 Letters, II, 251.

<sup>404</sup> Fragments, XLVIII (the movement dates from 1806).

<sup>405</sup> Letter to Muller, probably early 1810, Briefe, II, 419. German conservatives at that time practiced the study of national peculiarities, not least by polemical comparisons of the German to the French "character," see, e.g., Brinckmann's detailed letter to Gentz in 12.11.1807 Gentz's Briefe, II, esp. 297ff; see Marwitz, II, 2, 212.

<sup>406</sup> The Friend, Coll. Works, IV, 292, 296.

<sup>407</sup> The Convention of Cintra (1809), Prose Works, I, esp. (, 47, 64, 118131.

<sup>408</sup> A. a. O., f156. On Wordsworth's concept of nation, cf. Brinton, Pol. Ideas, ff.56

Wordsworth"<sup>39</sup>) rapidly declined after the final defeat of Napoleon and the new division of Europe on the basis of the dynastic principle. The basic assumption of the dynastic connection of the nation could somehow be reconciled with the likewise postulated origin of law and governmental power from the *societas* or nation. nation, since it merely meant the inclusion of an ethnic entity within certain state borders without changing its internal social structure and therefore did not have to contradict the<sup>40</sup> principle of the inviolability of traditional law - but it was impossible, it was impossible, however, to reconcile the dynastic principle with a conception of the nation as an intrinsically self-sufficient value and purpose, since such a nation resisted sovereign handling according to liberational dynastic criteria and demanded its own political expression, i.e., finally, the nation-state. Thus, to the extent that the conservatives, in the struggle against revolutionary universalism or expansionism, recognized the nation as an independent historical entity based on the commonality of race, language, tradition, etc., they had to remain on the halfway path, i.e., to frame this entity only in terms of its traditional, "organic" aspect, which in turn represented an additional confirmation of the rootedness of the individual in supraindividual entities. However, between the

The individual structure of the society and that of the nation is an important subdivision. differentiated. The *societas* was under the aegis of a law that anchored the existing hierarchical division, that is, the diversity of rights and individuals, but in the elements that constituted the nation, all individuals, by definition, had to participate equally, since a greater or lesser participation in religion, language, or custom could not be conceived on the basis of class differences. In this sense, the nation, even in its traditionalist version, contained a strong egalitarian component; it could therefore be understood, even in a counterrevolutionary context, as a kind of *volonte generale* or, at least, as an overarching authority to which all states had to submit in order to achieve higher goals.

The danger of such an interpretation of the concept of nation - counter-revolutionary in its approach and at least reformist in its consequences - was made clear to the conservatives in Germany not least by Gorres's pathetic nationalist rhetoric. Gorres did not oppose the French conqueror with the classical conservative axioms, which were in themselves just as universalistic as the revolutionary principles, but he insisted on the unbriable gulf between two nations foreign to each other. In the just struggle against an alien nation, the

<sup>39</sup> Cob ban, Burke, 150 (, who also gives a very good account of the relations between Burke's and Wordsworth's conception of the nation (144 ff.), informs us about his antipathy toward the national movements after 1815 (while in 1809 he was in favor of a more or less consistent implementation of the principle of nationality, see also a. O., esp. 142, 152, 155).

<sup>40</sup> This against Meinecke, *Weltbürgertum*, f252.

Nation, another nation discovers its identity and at the same moment it is transformed into energy that unfolds with elemental force in the given historical space. The nation has an "essence," and "everything foreign must be thrown out, everything peculiar awakened and refreshed. In the process, the national soul, in its now recognized and felt uniqueness, embraces all individuals, and "a special understanding among kindred spirits"<sup>41</sup> arises. Thus, before the alien enemy, the previously significant differences within the nation recede into the background, master and servant become more distinct in war, so that the vertical divisions (between peoples) supersede the horizontal ones (between estates). In the light of the new and decisive insight that "in the innermost germ and center ... In the light of the new decisive insight that "in the innermost nucleus and center the nation is one and equal to itself, and then again in the outermost periphery and in the farthest development, where it separates itself from the other peoples in language, custom, nature and character and opposes itself to them," both the irrefutable downfall of the feudal system and the obsolescence of the confessional antagonisms are established.<sup>42</sup>

strative, and if French revolutionary centralization must be avoided, some other way *must* be found to do<sup>41</sup> justice to the "demands of the present".<sup>3</sup> To safeguard "internal

In order to ensure "firmness and a united attitude toward foreign countries," therefore, "the public spirit *must be* allowed to have a constitutional voice and to influence the workings of the state administration in an internal state constitution. While Gorres accepts as the basis of the constitution the traditional division of the status quo into a doctrinal, a military, and a food status, he argues that each of these "forms of public life" should have a voice.

to be "closed in itself, as the determination of a whole requires, open

The constitutional system of the state is not to be divided and separated, but to function as the members of an organism in their mutual integration and interdependence. The division of the states in the state does not have a separating and dividing effect," but rather in the same way as that of the members of an organism in their mutual complementation and dependence.<sup>44</sup> This draft constitution culminated in the highly suspicious demands of the conservatives for general armament of the people (since the people must always feel "that they have a fatherland to lose and not merely a master to change") and "freedom of choice."<sup>45</sup> When he called for "securing the future through a lively, vibrant common spirit embracing the whole nation," he was met with fierce conservative resentment, although he was no less harsh on the adherents of the "Napoleonic New".

<sup>41</sup> See the reflections on the fall of Germany and the conditions for its rebirth published in 1810, *Ges. Schriften*, IV, esp. 226-229.

<sup>42</sup> Österreich, Preußen und Bayern (1814) = *Rhein. Merkur*, (88, cf. 113f  
<sup>43</sup> A. O. a. , f100, 105.

<sup>44</sup> The künftige deutsche Verfassung (1814) = *Rhein. Merkur* 65, 67, , 72.  
<sup>45</sup> *Rhein. Merkur*, (205, 208.



than that of the "antediluvian old man"<sup>416</sup>. This displeasure was further increased by Gorres' remark that "the powerful force of nature, which is becoming more and more unchained in the people every day", had<sup>41</sup> thrown the old diplomatic art and dynastic cabinet policy overboard.<sup>7</sup>

The conservatives noted that "the enthusiasm of 1813 had a strong demagogic flavor"<sup>418</sup> and disputed that the involvement of the

The people" had been the decisive factor in the victory over Napoleon; rather, the victorious campaigns had been organized and directed by the monarchs<sup>419</sup>. Apart

from the degree of truth of these assertions, however, they did not make the emergence of revolutionary or reformist nationalism irreversible. Indeed, the logic of

long-term development, which did not take into account the intentions of the historical actors, meant that of all the elements that the dissolution of the *societas*

*civilis* and the formation of modern statehood brought into the world, nationalism was the one that penetrated most deeply into the conservative camp in order to divide it or to reshape it politically and ideologically, from which, of course, the conservative identity had to suffer most severely. This process took place with particular drama in Germany, since here the national question remained open for the longest time, so that in view of the urge for unity that had become unstoppable for reasons of domestic and foreign policy, which in one form was only dammed up in order to break out openly or secretly in another, there had to be

a race between the parties to solve it. 1814 Marwitz<sup>420</sup> had already written to Hardenberg: "Equally indestructible, however, has taken root the idea of a common German fatherland. Whoever will embrace this idea will rule in Germany. The temptation to turn away from the universalism of the Christian-feudal aristocratic ideology and toward nationalism was easier for some conservatives to give in to after the Revolution had appeared under the universalist banner, so that the commitment to the nation could now be perceived *eo ipso* as the epitome of a counter-revolutionary attitude, whereby the non-conservative consequences of nationalistically inspired political action were often lost sight of. At least those conservatives who wanted to act under the pressure of concrete constraints within the existing new circumstances, but who at the same time did not want to make any fundamental concessions to revolutionary ideology, succumbed to this optical exchange without significant resistance.

modern statehood. The necessities of foreign policy and at the same time the realization that an essential prerequisite for self-assertion in the domestic political struggle was the successful defense of the nation's foreign affairs forced a wing of the conservatives to abandon the standish principles and the legal conception of the *societas civilis* altogether. This was done not only by putting the idea of the state ahead of the *civitas christiana*, but also by modernizing this idea so that it could remain effective in the international field. The question was: which internal organization is able to use the forces of the nation most effectively in the foreign political struggle, whose necessities and rules are completely independent of the ideas and desires of the conservatives (as well as of the revolutionaries)? This question, posed in this way, could no longer be answered in the 19th century in the sense of the pure conservative social ideal.

The inevitability of the departure from conservative orthodoxy as soon as The fact that foreign policy considerations came into consideration was already suspected by those Prussian conservatives who were more interested in the state cause than in the outcome of the war against Napoleon. The contrast between Finckenstein and Marwitz in this respect <sup>421</sup>is characteristic of the division of conservative loyalties that was already becoming apparent. It was not that Marwitz had become a revolutionary nationalist; however, loyalty to the king and belief in the military mission and honor of the nobility, which legitimized their social prerogatives, gave patriotic duty at least a higher priority in his eyes; Such nationalist motives, however, often helped to win over the nobility, which traditionally considered foreign policy to be the competence of the crown, to an active national foreign policy, if it was<sup>422</sup> pursued or covered by the monarch. The interconservative struggle over the nature and significance of the nation, which had 1810 not yet been fully settled, broke out with particular intensity during the time of Olmiitz. While the Gerlach circle believed that Prussia should abandon "the illusion of the great nation,"<sup>423</sup> and regretted that "all the authors of our revolutionary foreign policy were<sup>42</sup> professing Christians,"<sup>423</sup> Radowitz came to the conclusion that the demand for a "great nation" was not a "great nation.

The demand for a "national life" was "unavoidable" and would "remain<sup>425</sup> a dangerous weapon in the hands of the revolutionary party until it is wrested from it. The national conservatives adhered to this conviction.

<sup>421</sup> See Ramlow, Marwitz, 40 et seq.

<sup>422</sup> Cf. Ritter, Preull. Cons., 36.

<sup>423</sup> Thus Count Stolberg in a letter to E. L. v. Gerlach dated July 10, 1850 = E. L. v. Gerlach, NachlaB, II, 695.

<sup>424</sup> Thus E. L. v. Gerlach quotes a saying of Bindewald, NachlaB, I, 277.

<sup>425</sup> Gespräche, VIII = Ausg. Schriften, I, Cf 213.. fragments, I = Ausg. Schriften, II, 365: The old principle of the state ... was the dynastic one. The new one is the national one, according to

<sup>416</sup> Deutschland und die Revolution, Ges. Schriften, XIII, 59, 52.

<sup>417</sup> A. a. O., 97.

<sup>418</sup> Thus E. L. v. Gerlach, Au&., II, 115.

<sup>491</sup> Gentz, Ober das Wartburgfest (1817) = Schriften, III, esp. ff. 39

<sup>420</sup> IT, 2, 223.

of the "PreuBisches Wochenblatt", distancing themselves from the policy of surrender to Austria, which was incapable of resisting the shocks of the revolution in any other way than by surrendering the foreign policy.

litical prestige of Prussia<sup>426</sup>. Against the Kreuzzeitung and the Gerlachs make

They argue that the principles of domestic policy cannot be<sup>427</sup> applied to foreign policy, but at the same time they go one step further and demand that

a treatment of domestic political questions according to the needs of foreign policy. Precisely because they want to mobilize all the real forces of the nation in the service of foreign policy goals, they reject the status quo monarchy and, by subjecting the monarchical institution to the idea of the state, they tend toward a more positive assessment of the constitutional state, even if they continue to speak of the "constitutional state".

do not want to<sup>428</sup> know anything about continuous parliamentarization. The non-conser

These national conservatives try to limit the negative implications of dealing with domestic issues in the interest of national foreign policy by setting aside "the „people" in the sense of dynastic unity, which could eventually be transformed into pouvoir constituant, in order to give primacy to the state across the board; The "organic" conception was replaced by an activist-voluntarist one, in which more importance was given to personal decisions and concrete institutions than to the supra-governmental ones.

The historical school was swarming<sup>429</sup> with these extraordinary forces. Above the

We need not go into the connection of these ideas with the events of the Reichsgriindungszeit. We need only say that the emergence of a national-conservative current, with the de facto - and in part even explicit - abandonment of essential aspects of pure-water conservatism, was a further indication of its growing inability to formulate an active policy in line with the new situation on the basis of its own premises, and thus also of its downfall. Nationalism, snatched from the hands of the revolution and turned against it, could temporarily secure the ruling position in the state for conservative elites on condition that they would prove capable of successfully playing new social roles; but this was fatal for conservatism proper as a historical phenomenon and movement. At least in this E. L. v. Gerlach was not mistaken.

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The twofold direction of the tribal unity and the popular state unity unity. All the existing states are drawn into this transformation process and will have to go through it "....

<sup>426</sup> Behne n, Preull. Wax, 181.

<sup>427</sup> A. a. 108ff.0.,

<sup>428</sup> A. a. 0., 136ff.

<sup>429</sup> A. a. ff1650.,, 206ff., 217.

## 5. conservatism and liberalism

### *a. The Conservative Evaluation of Liberalism and the Possibilities of an Alliance with it*

The fundamental conservative assessment of liberalism is easy to see: liberalism belongs to the revolutionary forces of darkness. The contrast between liberalism and (social) democracy, which is becoming more and more prominent and is observed by conservatives not without glee, does not generally lead to any substantial revision of this Manichaeian judgment, but only modifies it to the effect that liberalism is the inconsistent and masked or homely revolution, while democracy is the consistent and open revolution. The conservatives, in turn, were convinced of the objective equality of essence and effect of liberalism and democracy for reasons which, taken in their historical substance, have proved to be valid in the development of the two centuries that have passed since then. As early as shortly after 1789, conservatives insistently pointed out that the principle of equality should not stop at the formal, i.e. not at the equality of all before the law.

but must, out of its own immanent dynamics, sooner or later lead to the demand for equal distribution of property<sup>430</sup>; between formal equality and real social inequality, there was an explosive contradiction<sup>431</sup>, and it was therefore foreseeable that "when the nobles were hanged, they would be hanged".

the series then also come to the biirger that if the aristocracy of the

The government was not ready to<sup>432</sup> "attack" the aristocracy of property if it was destroyed in the first place. The critique of liberalism, which was characteristic of the conservatism of the century<sup>19</sup>.

was not elaborated until the French Restoration, when liberalism came to the fore in the form of an organized ideological movement and a cohesive party. The liberal distancing from the "horrors" of the Revolution could not reassure the French restorers as long as liberalism professed in principle the revolutionary ideal of equality; this seemed to them' sufficient proof of the objective coherence of the revolutionary ideology.

The Jacobins appeared to be<sup>433</sup> merely the externalists of liberalism. Montlosier described the attitude of the liberals as follows: "On proclame avec soin son horreur des exces revolutionnaires; on n'en provoque moins une revolution nou-

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<sup>430</sup> Rivara, Extraits du Journal, Oeuvres, IV, 146; Brandes, Polit. Betr., 65; cf. Bonald, De la richesse des nations (1810), Oeuvres, VII, 594.

<sup>431</sup> Rehberg, Investigations, (119

<sup>432</sup> Mallet du Pan, Reflections, 33.

<sup>433</sup> Mellon, Political Uses, 83et seq. 88.

velle <sup>434</sup>; they thought they could start a revolution and then lead it in their sense, while the Jacobins, for their part, speculated on exploiting<sup>435</sup> the revolution started by the liberals for their own purposes. In view of this basic attitude of liberalism and the general spread of its slogans (*esprit de siècle*, *marche du temps*, *accroissement des lumières*, *progrès de la civilisation*, etc.), which revolutionized ever broader sections of the population, the impression that the revolution had<sup>436</sup> reached its conclusion was wrong. On the contrary, it will continue in a Jacobin rather than a liberal direction, since liberalism contains an unavoidable contradiction: if it consistently upholds its principles, it will have to end up with the "government of the multitude. If liberalism were to follow its principles consistently, it would end up in the "government of the multitude," and if it were to serve its true bearer, namely the bourgeoisie, it would have to exclude the great masses from government and violate its own principles: "concoit - on un semblable galimatias"<sup>437</sup>

These leitmotifs of the French critique of liberalism have been

and repeated, varied, and enriched it many times. In 1823, Schlegel was also of the opinion that the revolution was by no means complete (rather, the current phase was "the end of the beginning instead of the other way around")<sup>438</sup> and combined this view with the diagnosis that liberalism was "nothing but a somewhat differently modified riposte to the revolution"<sup>439</sup>. Jarcke even considered "doctrinal liberalism" to be "a thousand times more dangerous" than Jacobinism, because it was "clever" and "much more flexible in its forms", even if it was "no less reprehensible in its principles"; the "immediate succession of the old Jacobinism" and its "more refined" liberal version therefore belonged together<sup>440</sup> ideologically and politically. The reason why St. Simon and (the late) La Mennais had

<sup>441</sup>The "most consistent form" of liberalism lies in the inevitable transformation of the formal principle of equality into a material one and of the political revolution into a social one - a transformation that is clearly visible<sup>442</sup> in the development from the glorious revolution to the great revolution of 1789 to the July Revolution. Liberalism fights against aristocracy and for equality, it wants to level - but wants the money aristocracy to be alone.

<sup>434</sup> Monarchy, VII, 86.

<sup>435</sup> A. a. VII, 0., 166. Cf. Montlosier's analysis of the composition of the liberal party on pp. 158.

<sup>436</sup> A. a. V, 0., 151f. Cf. the analysis of the individual principles of the revolutionary spirit, 155 ff.

<sup>437</sup> A. a. 0., VII, 95.

<sup>438</sup> Signature of the Age, I = Works, VII, f488.

<sup>439</sup> Philosophy of History, XVIII = Works, IX, 411.

<sup>440</sup> Verm. writings, I, (40,283; cf. III, (137

<sup>441</sup> A. a. I, 0., 303.

<sup>442</sup> A. a. 0., I, Note.175

The communist principle that private rights must give way to the benefit of the great majority, and they know it, but they hope to have the power of consequences. In sacrificing the rights of property on the altar of "individualism," they adopt the communist principle according to which private rights must give way before the benefit of the great majority - and in fact they know it, "but they hope to escape the power of consequences by the force of the police; they believe it is possible and well done to expropriate themselves today and tomorrow ... to invoke the sanctity of property".<sup>444</sup> Radowitz saw the basic contradiction and dilemma of liberalism in a similar way<sup>3</sup>: If, however, the principle of the sovereignty of the people is fundamentally approved, this must lead to <sup>444</sup>"absolute democracy," just as, in the Eastern sphere, the "equal claim to earthly wealth" would lead to the "dissolution of property and the

Giitergemeinschaft" will<sup>44</sup> bring about-<sup>5</sup> For the time around represents 1830 Radowitz

The "luminaries of the principled revolution" maintained their opposition to the now largely saturated bourgeoisie and attempted to organize and harness the workers for their own purposes. For the "luminaries of the principled revolution" maintained their opposition to the now largely saturated bourgeoisie and attempted to organize the workers and to harness them to their own ends, with the question of property taking the place of the political one; it was precisely the new social or workers' question that made the opposition between liberalism and democracy not only unfamiliar but also permanent, while at the same time forcing the former to deviate from its theoretical principles<sup>446</sup>. As the conservatives rightly point out, the liberal breach of principle is most vividly illustrated by the right of suffrage, whose attachment to property is basically a "furtive reapproximation" of the state constitution; "the feigned sovereignty of the exchanged people thus consists merely in the power to elect a new master every 4-8 years with unrestricted authority and then to withdraw again modestly and to wait and see what the new master will do for them"<sup>44,7</sup>.

The critique of liberalism, which revolved around these leitmotifs, was not a product of the scholars' room, but took shape in everyday political politics.

<sup>443</sup> A. a. 0., III, f138, 167.

<sup>444</sup> Fragmente, I = Ausg. Schriften, II, 287; cf. 1338. über den „Gegensatz zwischen der politischen und der sozialen Revolutionspartei".

<sup>445</sup> Gespräche, IX = Ausg. Schriften, I, (221; cf. Fragmente, I = Ausg. Schriften, II, 316.

<sup>446</sup> Fragments, I = Ausg. Schriften, II, ff; 177 Conversations, III = Ausg. Schriften, I, ff., 103 131 ff.

<sup>447</sup> Vollgraff, Tauschungen, (35,37; cf. Marwitz, II, (2,432

and in the conservative press<sup>448</sup> before it was theorized in the systematic works of conservative ideologists. Cortes and Stahl, too, basically did nothing other than present<sup>449</sup> the inconsistencies and half-measures of liberalism and the necessity of its transition to (consistent) socialism according to the above-mentioned, decades-old scheme, which is why a special analysis of their views in this regard is also appropriate here. But precisely because of its concrete socio-political origin and reference, the conservative critique of liberalism could not always remain with the ideal-typical purity and unfamiliar stringency. Conservatism was not alone on the battlefield with liberalism as its only enemy, but in the realm of contemporary politics there were at least two other important forces, i.e., the traditional monarchy and the rising (social) democracy, so that a game of biases and reversals had to develop, in which some combinations were possible and corresponding ideological attempts at rapprochement or demarcation were necessary. We have just described the first conservative demarcation against liberalism; in the following, we will explore the extent to which a bias, or at least a rapprochement, of conservatism and liberalism against both absolutism and (social) democracy was considered and pursued, and what obstacles stood in the way in each case.

Let us first turn to the question of how the presence of social democracy on the socio-political terrain, which threatened both sides, affected the early relationship between conservatism and liberalism. Although the aforementioned frequent conservative warning to liberals that they would be the next victims of the equality they themselves propagated was uttered in the heat of fierce polemics, it implied a recognition of a certain commonality of fate and mutual interests and could even be interpreted to mean that the conservatives would fully recognize <las bürgerliche Eigentumsrecht on condition that their own would likewise be declared inviolable. Thus a common front of all proprietors against social democracy could be brought about, omitting in advance the question of the particular nature of each form of property in its obvious connection with the form of the polity in general. The relationship between conservatism and liberalism varies according to whether this exclusion succeeds or fails in accordance with the particular concrete situation. Remarkably, conservatives, who illusionlessly recognized the irretrievability of the ancien regime, already in the early years of the revolution

proposed a union of all the propertied classes as the only way to preserve the rule or at least to save the existence of the nobility. Mallet du Pan based his constitutional plan for a "premiere chambre", which would be reserved for the clergy and the nobility, but also "aux citoyens de tout ordre distingues par de grands services ou de grands proprietes", on the following social policies

tic overlay: Le jour est arrive ou Jes proprietaires de toutes classes doivent sentir, enfin, qu'ils vont tomber à leur tour sous la faux de l'anarchie"<sup>450</sup>. And

Montlosier still regretted in the Restoration period that in 1789 no political opening to the bourgeoisie and no "representation generale des proprietaires," as he had already envisioned at that time, could<sup>451</sup> have come about. However, he still considered this perspective to be the only viable one, and accordingly he formulated his constitutional plans for a Senate and a Chamber of Deputies with respect for "tout l'ordre des proprietaires"<sup>452</sup>—he exhorted the nobility to renounce dreams of a restoration of the pre-revolutionary state and resentment, and at the same time he called on the bourgeoisie to show restraint in view of the danger from below: c'est avec Jes interets anciens

qu'on gardera vos interets nouveaux. C'est n'est pas clans la revolution que la revolution peu esperer quelque salut; c'est clans la contre- revolution, seule, le Roi à sa tete".<sup>453</sup> Chateaubriand thought no differently at the time. Alie "proprietaires", he thought, needed to know that they could compete with each other with regard to their "surete mutuelle".

solidaires".<sup>454</sup> To create a unifying bridge, he distinguished between the "interets materiels revolutionnaires," which had de facto emerged after 1789 and were now to be eliminated, and the "interets moraux revolutionnaires," which were aimed at the consistent implementation of the principle of equality and were therefore to<sup>455</sup> be fought. On this basis, he considered it possible to win over to the cause of constitutional legitimacy people "dont les interets sont formes hors de la monarchie legitime", and thus to create a broad front of "interets moraux revolutionnaires". and in this way to establish<sup>456</sup> a broad front of "gens de bien," that is, a new aristocracy as the pride of the new conservative France. That this strategy was not intended as a historical legitimization of liberalism, but as a taming of it under the aegis of a clever aristocracy, was shown by the vehemence with which Chateaubriand attacked the July

<sup>448</sup> See, for example, Scheel, Berl. Pol. Woch., 100ff.

<sup>449</sup> Cortes, Ensayo, II, =8 Obras, II, esp. ff595. (the theological aspect of Cortes- question, which, for all its rhetoric, is not original either, will occupy us in the section of this chapter); Stahl, Parteien, esp. 71ff, 78ff, ff, 100177(, 273.

<sup>450</sup> Memoires, I, resp. 188264.

<sup>451</sup> Monarchy, II, 230(,173,225, 340(

<sup>452</sup> A. a. 0., IV, 436ff. (the quoted sentence is on p. 438).

<sup>453</sup> A. a. 0., IV, ff;89 V, 463; VI, 53; VII, (233here the quoted passage).

<sup>454</sup> Seconde Lettre à un Pair de France (1824) = Oeuvres, XII, 164.

<sup>455</sup> De la Monarchie selon la Charte, II, 15 = Oeuvres, XII, 42. The programmatic article of the Berliner Polit. Wochenblatt has adopted this distinction, see Jarcke, Verm. Sehr, 5.

<sup>456</sup> S. the niche speech delivered on 25. 3. 1820 = Oeuvres, XIV, 106; cf. Reflexions politiques (Dec. 1814), XIII = Oeuvres, XI, 243; De la Monarchie, ...II, = 51XII, 78; Preface des ouvrages politiques (1826) = XIV, (3





revolution: nous marchons à une révolution générale"<sup>457</sup>. This meant that liberalism, left alone, had none of the virtues that might have been attributed to it as long as it was willing to remain within the paternal bosom of the nobility. Progress, in other words, could at most appear acceptable as one side of a balance which was at least as much dependent on the sustaining forces; from the polarity of the opposing effects then arose the "harmonious balance of the great correspondent, at once supporting and counterpoising, interests of the state"<sup>458</sup>.

The conservative expectation that liberalism would play second fiddle in the eventual grand counter-revolutionary coalition of all property owners could, of course, be expressed more loudly in countries where the bourgeoisie was (still) clearly inferior economically and politically. Thus, in Germany, too, conservatives of pure water pleaded for a free scope of "industrial and commercial forces"; this unhindered development, however<sup>459</sup>, could only be the "permitted development," i.e., it could not endanger the existing social hierarchy, but rather consolidate it by satisfying one of its now important stages. The free development of capitalism in itself, especially in its early phase, did not seem capable of upsetting the traditional relationship between the nobility and the bourgeoisie. The willingness to accept or the inclination to separate could rather be measured by the conservative attitude to two other questions that had already arisen during the pre-revolutionary period, namely whether bourgeois should be allowed to acquire noble titles and thereby rise to the nobility, and whether the nobility should be allowed to engage in capitalist businesses. It is clear that the simultaneous rejection of the saleability of noble property and the "peaceful occupations" of the nobility<sup>460</sup> precluded a significant opening to the bourgeoisie. Rehberg took a more moderate position.

z. e.g., who calls for an approximation of the Stände in view of the growing power of the

The "wealth of money" was unavoidable, the nobility had become detached from the traditional warrior spirit under the influence of the spirit of the "bourgeois trades" and even went so far as to declare the tax exemption of the nobility anachronistic - on the other hand, however, he approved of the frequent arraignment of bourgeois and considered the occupation of the nobility with trade and industry to be incompatible *with the* independent spirit that service to the community required.

<sup>457</sup> De la Restauration et de la Monarchie élective = Oeuvres, **XII**, 276ff. (the quoted sentence is on p. 283).

<sup>458</sup> Thus Coleridge, Church and State, - II = Works, X, (24, (28

<sup>459</sup> The quoted sentences in Jarcke, Verm. I, 44; cf. above note. 455.

<sup>460</sup> Thus Marwitz, for example, who otherwise expects an improvement of the situation of the nobility from the introduction of primogeniture (II, 159); 2, 157, cf. already Moser, Werke, IX, 345; X, 74(

Thus, <sup>461</sup>even the most familiar or non-noble conservatives hardly dared to make an open plea for a genuine fusion of all the propertied classes into a single upper class. The reason for this can easily be guessed: if the nobility remained only with their property and renounced their social and political prerogatives, they would merely form a part of the society opposed to the state and thus accept the final dissolution of the *societas civilis*, which, in contrast to the separation of state and society, was based on the unity of the economic and the socio-political, as embodied by the traditional aristocracy. In countries where the bourgeoisie appeared particularly strong, even worse was to be feared, namely that the nobility would not even retain the top position in the economic hierarchy of society, but would be partly overtaken and partly absorbed by the bourgeoisie. French restorers, such as Cottu, knew this very well.<sup>462</sup> Therefore, if one did not want to completely reject the bourgeoisie, taking into account the new circumstances, one considered a merger with it, which, so to speak, presupposed its feudalization or led to it. A stricter form of this feudalization was proposed by Bonald, who demanded that the noble landowning bourgeois abstain from capitalist business<sup>463</sup>, and a looser one by Radowicz, whose new aristocracy would exclude a certain part of the nobility and include a certain part of the bourgeois-born, although large landholdings would continue to form the "center of political society" and the acquisition of landholdings would<sup>464</sup> make it possible to rise to the nobility; What Radowicz meant in concrete terms, he made clear by the example of the non-noble officers, who absorbed the "spirit of the estate", so that the "transformation of the form" proceeded organically, "without endangering<sup>465</sup> the essence in any way".<sup>5</sup> This, of course, could not become a coalition of basically equal possessors, since in it not property in general and as such, but only a certain form of property, connected with a certain form of commonwealth, was preferred. In addition, the workers' question stood in the way of a merger of the nobility and the bourgeoisie or conservatism and liberalism against democracy, which was initially played out by the nobility at least to some extent and for tactical reasons against the capitalists<sup>466</sup>. Nevertheless, it was precisely the workers' question that later made possible the initially unsuccessful merger - but only after the aristocracy had been absorbed into the new economy and society.<sup>467</sup>

<sup>461</sup> Nobility, 199 ff., 151 ff. 113, 101,.; cf. Brandes, Zeitgeist, 186ff. 116

<sup>462</sup> De la nécessité, ff. 45 (94

<sup>463</sup> To summarize, Moulinié, Bonald, 348(

<sup>464</sup> Gespräche, XV = Ausg. Sehr., I, 371f., ff. 383

<sup>465</sup> Fragments, I = Ausg. very., II, 353.

<sup>466</sup> S. u. Chap. IV, Sect. 3.

<sup>467</sup> S. u. Kap. IV, Sect. d2.

Let us now turn to the question to what extent and in what sense conservatism and liberalism mutually accepted each other through their mutually declared fundamental enmity to absolutism, or to what extent the origins of this enmity were identical or not. As a small historical introduction to this question, it may serve to recall that commonplaces of modern individualistic natural law had already interfered with the standard leitmotifs against absolutism before 1789. Thus, around the middle of the 17th century, the Prussian stancle invoked Grotius<sup>468</sup>, while the Hungarian stancle had<sup>469</sup> not only Montesquieu but also Rousseau to offer against Joseph II. In France, too, the Estates opposition made propagandistic use of Sidney's and Locke's teachings, or rather catchwords, and even contributed significantly to the dissemination and journalistic consolidation of the vocabulary (citoyen, loi, patrie, constitution, nation),<sup>470</sup> The<sup>471</sup> conservatives of the pre-revolutionary period could afford this use of liberal slogans (or at least of those that proved liberal in their long-term historical impact) because liberalism as a political-ideological movement was not yet strong enough at that time to fully understand the specific content of its own terms, let alone to enforce them. The confrontation between the bourgeois and aristocratic opponents of the French monarchy during the months immediately preceding the revolution, however, showed in all clarity that the ideas originally put forward by both sides were not yet fully understood.

<sup>468</sup> Urkunden und Actenstücke, XV, Note. 4451.

<sup>469</sup> Mitrofanov, Joseph II, 299ff.

<sup>470</sup> Link, Herrschaftsordnung, 99ff. Link does not ask himself under which concrete conditions this interaction was possible and which was the respective concrete socio-political reference and sense of the topoi he refers to; he seems to believe that all this formed equally and without further ado a self-evident component of "occidental rule of law", without the need for more precise conceptual and class differentiations. He describes very well (137ff.) how, within the framework of the German territorial state, the bourgeois ideas and values tended to develop more in terms of the ideal of the welfare state than in terms of the "constitutional state."

<The German absolutism of the century is also noted by Valjavec (Entl. d. pol. Strom. 39ff. 50). Valjavec (Entst. d. pol. Strom., 39ff., 50) also notes the close connection of old-state and liberal points of view in the German absolutism criticism of the century.18.

<sup>471</sup> Birtsch, Landständische Verfassung, 53; Bickart, Parlements, passim; Carre, Noblesse, 325ff.; Palmer, Zeitalter, 478ff. This symbiosis was prefigured in Jurieu's work, which, because of its definition of the people and its conception of less Rechte und Freiheit, must undoubtedly be classified as a conservative,<sup>3</sup> but at the same time drew inspiration from Locke and the more recent doctrine of sovereignty, see Mercier, Theories, 408 ff; Dodge, Pol. Theory, esp. 64ff, 151ff.

z. The anti-absolutist slogans, some of which were presented together, could<sup>472</sup> be interpreted in very different ways.

After 1789, however, conservatives could no longer use similar slogans with the nonchalance of earlier times, especially since they were now striving for a counterrevolutionary alliance with the monarchy. But since, as we know,<sup>473</sup> the anti-absolutist tradition lives on powerfully in post-revolutionary conservatism, a common conservative strategy for the ideological consolidation of liberalism consists in presenting it - insofar as it appears "genuine" and not revolutionary - as indisputable. This implied, however, that the surest way to remain a good freedom-loving liberal was still to follow the nobility with trust. From such a point of view, Montlosier wanted the counter-revolution to be understood as a return not to the absolutist but to the liberal past, or "aux anciennes mœurs libres de la France,"<sup>447</sup> while Radowitz, who also derived<sup>475</sup> "genuine" liberalism from the medieval conception of the limitation of monarchical power, recommended in<sup>476</sup> 1848 a union of the monarchical and the "old liberal" parties to ward off the onslaught of "liberalism. This means: the counter-revolutionary party must overcome the division into an absolutist and a standish wing in order to proceed with united forces against revolutionary liberalism; "old liberal" here means as much as standish or anti-absolutist. As late as 1822, Schlegel was still calling the adherents of a statist monarchy the "real" liberals, in order to distinguish them from the non-real, i.e. the revolutionary-minded -<sup>477</sup> the Gerlachs were thinking of the same distinction when they claimed the designation "liberal" for themselves. Thus, Leopold, who in other contexts expressed contempt or hostility toward the "liberals,"<sup>480</sup> <sup>478</sup> considered himself a man of "liberal principles" because he valued the role of the stancle in a monarchy<sup>479</sup>: liberalism was acceptable to him on the condition that he "abandon the doctrine of authority from below. Ludwig also finds that his "genuine liberalism" drives him to rebel against absolutist principles.<sup>481</sup> He feels himself to be a liberal when he criticizes "the evil of intervention by cabinet orders in legislation and the administration of justice.

<sup>472</sup> S. ch. II, sec. 3d and the notes u174,175. 176.

<sup>473</sup> See section 3c of this chapter.2

<sup>474</sup> Monarchy, VII, cf. 100,109.

<sup>475</sup> Gespräche, X = Ausg. Schriften, I, f258.

<sup>476</sup> Fragmente, I = Ausg. Schriften, II, 338f.

<sup>477</sup> Signature of the Age, I = Works, VII, cf. 529,556.

<sup>478</sup> e.g. Denkwürdigkeiten, I, 86ff.

<sup>479</sup> A. a. O., 48.

<sup>480</sup> Letter to Ludwig from 12.10.1858 E. L. v. Gerlach, Nachlass, I, 950.

<sup>481</sup> Records, I, 311.

In <sup>482</sup>extremis, he even goes so far as to imagine<sup>483</sup> an "approach" to (not quite "genuine") liberalism as a more effective resistance to "the encroaching absolutism and Bonapartism," especially since in liberalism, as he now recalls, "old Germanic legal concepts had<sup>484</sup> also made room for themselves, albeit in a distorted form.

The fact that Gerlach did not strive for this approach in practice was not only due to his temperament and not only to a temporarily unfavorable constellation, but at least as much to insurmountable fundamental obstacles. For the anti-absolutist catchwords necessarily took on a meaning in the conservative mouth that must have been unacceptable to the liberals. Directly or indirectly, to a greater or lesser extent, the structural diversity of the underlying social model had an impact everywhere. Both sides wanted to defend freedom and liberty rights against absolutism or the state and the state apparatus. But which and whose freedom did each of them have in mind?

both? To the conservatives, who have not made the distinction between private and

In the case of the "public", it was not about the interference of the authorities in the economic or religious affairs of the individuals as such, but rather about the "acquired rights" of the corporations, which were to be<sup>485</sup> protected against "arbitrary interferences" <sup>5</sup>; the individual was not to remain unprotected, but he could be protected as a member of a corporation or a class - and if sometimes noblemen who defended their own rights used the modern individualist-naturalist vocabulary, they did so innocently, because it seemed inconceivable to them that there could be other politically relevant *In divi dues* at all outside the *oikos* leaders; The revolutionary potential of the individualist conception only came to the fore when individuals of a completely different kind appeared on the scene *en masse*. It needs no explanation that the primacy of the corporation or the primacy of the individual were associated with fundamentally different socio-political options, especially since the former called into question the existence of the modern state, while the latter virtually presupposed this existence: for, as we know, the modern sovereign state is characterized precisely by the fact that in it all individuals are indivisible from the state. Therefore it becomes understandable why conservatives and liberals mostly had to talk past each other when they jointly tried to derive the power of government from the "people". After 1789, of course, conservatives were reluctant to remember this scholastic *topos*, which was now open to reinterpretation.

<sup>482</sup> A. a. 0., 231.

<sup>483</sup> Nachlaß, I, cf. 398, 392.

<sup>484</sup> Records, I, 260.

<sup>485</sup> See, for example, Schlegel's conception of the tasks of government, *Signatur des Zeitalters*, I = Werke, VII, 543; on this unavoidable discrepancy between the conservative and liberal conceptions of freedom, see v. Martin, *Weltanschauliche Motive*, 141.

If the,, liberals were not at all averse to keeping the great mass of individuals away from the management of political affairs, they could not be a reliable ally in this case either, because this keeping away was actually done only by circumventing or misinterpreting their own principles; They could therefore change their practice - and even lighten their consciences - if they considered the moment opportune to throw new masses into the battle against conservatism. And even the often proposed common defense of property against the fourth estate was not free of ambiguities. The inviolability of property, if sanctioned by liberals in a situation in which noble-feudal property was still superior, could only mean the historical suicide of the bourgeoisie; *before* the expropriation of noble-feudal property, the guarantee of property would have to function in a completely different way than *after* an expropriation.

such-<sup>486</sup> That is why the coalition of the proprietary timers only really came into being

came about when the pre-capitalist forms of property had virtually disappeared, while the enemies of capitalist property had become strong.

Finally, we should point out a tactical-practical reason why the common antipathy of conservatives and liberals against absolutism has not been able to create a close and lasting bond between them. We are not concerned here with the structural difference between the "organic" development of a corporately organized polity and the *laissez-faire* principle based on individual and autonomous action, but rather with the fact that conservatives and liberals were generally prepared to accept deviations from the "organic" or *laissez-faire* principle and thus to approve of the vigorous assertion of monarchy or state power. Therefore, the fundamental common rejection of state "willkür" very often turned into a competition for the favor of the alleged representatives of precisely this "willkür," so that no real trust could arise between the two anti-absolutist camps. We have already seen that after 1789 the nobility wanted to turn the monarchy into a counter-revolutionary spear; but the bourgeoisie courted it no less, and even had plans for a "democratic monarchy."<sup>487</sup> The fact that even liberal reforms, which wanted to respect self-government and provincial character, did not allow for the centralization of the government was a sign that the government was not a "monarchy".

<sup>486</sup> Cf. Koselleck's remark about Prussia: „In Preußen, the owners of the manors were the winners of the agrarian reform because the property guarantee of the ALR - in contrast to the French Revolution - was already in force before the redistribution of land" (*Staat u. Ges. in Preußen*, 72).

<sup>487</sup> On this constellation in Germany, see. Kondylis, *Reaktion- Restauration*, esp. 217-219.



The fact that the political-rationalist aspect had to be<sup>488</sup> strongly pronounced, as well as the unmistakable willingness of the bourgeoisie to make common cause with the state bureaucracy if this was in its interest, led the conservatives (in Prussia, for example) to take a more active role.

Ben) to bitter remarks about the "officers' liberalism" of Harden Berg's time<sup>489</sup> or about the relationship between "liberal bureaucracy" and bourgeoisie in the 1870s<sup>490</sup>. Such phenomena seemed to have replaced the old conservative insight of to confirm that liberalism or constitutionalism and absolutism "have the same root"<sup>491</sup>. What the liberals, in the face of the conservative attempts of using the crown for their own purposes could counter this is obvious.

The long debate on the constitutional question, which was dominated by the option of a constitution based on the rule of law or a constitution based on the rule of law, must be understood against the background of the above-mentioned differences in principle. Unlike our contemporary supporters of the unbroken "liberal tradition of the West," conservatives at the time did not cover up the fundamental differences between these two forms of the constitution in order to create a "constitutional vacuum.

On the contrary, they emphasized those differences by force and were aware that here *societas civilis* and the modern sovereign state, corporation and individual, tradition and voluntaristic setting stood in opposition to each other - a "transition" of the "organic" kind from the status quo to the representative state.

Assessment, which corresponded to<sup>492</sup> the nature and the situation of the things quite. The

The incompatibility of the status-based and the representative principle was already clear to the conservatives on the basis of the French conflicts and events of 1788 and 1789. Thus, in 1796, de Maistre was able to contrast the old "representation nationale," whose members were elected by certain class-bound people in certain places, with the new one, which would represent all individual members of society.

without exception and are also represented by all - eligible voters and

The individual was to be<sup>493</sup> chosen at the same time as the electable individual. Here, only a different basic feature of the two systems of representation was mentioned, but the contrast between tradition and revolution was nevertheless indicated in its full extent, since the equal right of all individuals to the representation of the dissolution of the *stancle* of the *societas civilis*, i.e. of the sovereignty of the people, was not to be denied.

was the same. In view of this, Bonald retrospectively stated: "une fois Jes trois

<sup>488</sup> Cf. Ritter's apt characterization of Stein's reforms, Stein, II, 334(, cf. ff.118

<sup>489</sup> L. v. Gerlach, *Denkwürdigkeiten*, I, Wagener106.490, *Erlebtes*, II, 42f.

<sup>941</sup> Leopold to Ludwig v. Gerlach, letters from 1859.7. u. =29.10.1850 E. L. v. Gerlach, *Reverberation*, II, 1018,716.

<sup>492</sup> About the difference between *landstanclic* representation and modern representation principle, see in general Gierke, *Genossenschaftsrecht*, I, ff.818

<sup>439</sup> Considerations, IV = *Oeuvres*, sp. 36-37.

ordres de l'Etat etaient ccinfondus dans une meme assemblee et un seul vote, la revolution etait inevitable, par l'excellente raison qu'elle etait faite"<sup>494</sup>. Since then For decades, the unbriable structural contrast between the constitutional and representative states remained present at the pan-European level<sup>495</sup>, but it was particularly sharply conceptualized in Germany, following the interpretation of Article 13 of the Federal Act, which was associated with various political expectations. Gentz, who had feared from the beginning that by invoking this article "the ambiguous principle of the estates ..... with purely democratic principles and forms, and that claims would be made on this understanding, which were<sup>496</sup> incompatible with the monarchy, was one of the first to seek a concise formulation of the existing contrast between the two principles of representation. It seemed to him to be decisive that in a national constitution corporations which exist by themselves - i.e. from the „natural foundations of a well-ordered bourgeois society" and the The "state" is a constitutional entity that originates from "inherently existing, not man-made, basic elements of the state" and participates in "state legislation" through its delegates, but does not exercise any sovereign functions, whereas in a representative constitution, the persons participating in state legislation do not have any sovereign functions. the "rights and interests of individual Stancle, but the entire mass of the people"; here, therefore, the principle of the "sovereignty of the people" and the equality of rights or equality before the right", which is<sup>497</sup> a work not of nature but of force and will. The fact that the states represent themselves and not the people (in the new sense) was, of course, a matter of course. known for quite some time and has been repeated<sup>498</sup> again and again, but Gentz gives In the context of the efforts of the nobility after 1789 to win over the crown for a counter-revolutionary alliance, he grants the estates mere participation in legislation, while the supreme legislator remains the sovereign, which runs counter to the revolutionary separation of powers.

s011<sup>499</sup>. This position of the monarch implicates that there is no furtive

<sup>494</sup> Observations sur l'oeuvre etc., *Oeuvres*, VII, Cf625.. ch. II, para. 3d.

<sup>495</sup> See, for example, Cortes, Carta al director de la 'Revue des deux Mendes' (1852), *Obras*, II, 769,

771,773. In England, too, arguments were put forward against the Reform Bill, which only are understandable against the background of the antagonism of standish and representative constitution, see, e.g., Coleridge, *Talk*, and 25.6.1831,20.11.1831=24.2.1832 p. 119(, 143f., f149.; cf. already Wordsworth, *Two Addresses to the Freeholders of Westmorland* (1818), *Prose Works*, I, ff215, esp. 239(, 244f., 251f.

<sup>496</sup> So im Eingang zu den Karlsbader Beschlüssen von Schriften,1819, III, 162f.

<sup>497</sup> About the difference, u214. 215.

<sup>498</sup> See, for example, Haller, *Restauration*, II, 337.

<sup>499</sup> On the Difference, 218f. On the basis of the same premises, Schlegel saw a difference in essence between the constitutional and the representative constitution in that in

The constitutionalist parliament could be transformed into a representative one, so that its sovereignty would be blocked from the outset. Since prominent liberals, on the basis of their natural-law individualist presuppositions, saw the difference in essence between the constitutional and the representative constitution just as Gentz did, even if they associated with<sup>500</sup> it quite different value judgments, the polemics about this question continued in Germany, and a whole series of writings appeared in March in which the conservative point of view was repeated, varied, or deepened. The authors are aware of the fact that, as the representatives of representative parliaments no longer represent individual historically determined rights and interests, but "opinions" (i.e. the voice, the mood and the demands of the people as a whole), they cross the threshold of the principle of popular sovereignty. They also know that this can only take place on the basis of modern statehood, i.e., only when the corporately structured people has been replaced by a "homogeneous" people consisting in principle of equal "citizens of the state" and when "centralization" has<sup>501</sup> eliminated all "provincialism."

Under these circumstances, constitutional aspirations of the nobility could not mean an offer of liberalism; on the contrary, they expressed the desire to revitalize the traditional standish principle when absolutism and "liberal bureaucracy" seemed to be proceeding in the interests of the bourgeoisie; the loud demand for a "good" constitution went hand in hand with a sharp condemnation of the "bad" ones. Paradigmatic in this respect is the policy of the Prussian nobility during the reform period. By appealing ideally to the still living memories of the pre-absolutist past and in reality to the remnants of the provincial estates, which had never been completely eliminated even in absolutist Prussia, they demanded, for their own protection against the "bad" constitution.

Despite warnings of some nobles against too far-reaching demands of the Estates, the constitution was<sup>502</sup> characteristically not to be based on a (Estates) all-PreuBian state representation, but on the provincial estates themselves. With the establishment of the provincial and district estates in the year, this goal 1823<sup>503</sup> seemed to have been achieved at least in part.

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In the former, the royal power is the "center and keystone of the whole system," while in the latter it is simply eliminated, see *Signature of the Age*, III = Works, VII, 584f.

<sup>500</sup> Thus, Mohl argues that the Estates constitution was the product of certain historical circumstances and that the Estates represented themselves or their own interests, whereas the representative constitution resulted from the *ius naturalis* and represented all individuals equally (*Dissertatio*, esp. note 15, 18, 29 11).

<sup>501</sup> Vollgraff, *Tauschungen*, esp. 13ff 24, f. 36 ff; Solms-Lich, *Deutschland*, esp. 16f, 20; Jarcke, *Verm. Schriften*, I, 186ff; 163, Radowitz, *Gesprache*, IX = *Ausg. Schriften*, I, 238.

<sup>502</sup> Steffens, *Hardenberg*, 27 ff; Vetter, *Kurm. Adel*, 19ff, 57 f (cf. 146), 62 ff; Miise beck, *Markische Ritterschaft*, 161f, f. 169 176f, 355.

<sup>503</sup> In addition Vetter, *Kurm. Adel*, ff. 76

However, the difficulties of the conservatives did not end there. Because under the pressure of the changed real circumstances as well as <lessen, what was called at that time "Zeitgeist", a process began, which resulted in the (partial) functional change of the established state constitutions in the sense of the modern principle of representation. This process did not go unnoticed by interested contemporaries, especially conservatives. Solms-Lich noted that the constitutions introduced in the South German states after 1815, while remaining constitutional in name, incorporated strong repressive elements, which caused dissatisfaction on both sides and only intensified<sup>504</sup> the struggle between the parties. Generalizing, Funke argued that the newer ideas about representation came to Germany at a time when the constitutions were to be established, and that they were therefore influenced by these ideas in the way they functioned, especially since the assembled parties were no longer the "firmly defined corporations of the past"; they did not act as representatives of particular interests, but - in accordance with the new political concepts that had been introduced - in the name of the common good<sup>505</sup>. Campe made<sup>506</sup> similar observations about the necessary adaptation of the status quo to the spirit of the times.

The danger of a re-functioning of the status quo according to the liberal representation. The new "heresy" principles of the "representation" have provoked new conservative warnings against "false doctrine,

the representative system was the true and contemporary further development of the old estates.<sup>507</sup> That such a further development was to be feared was made clear by constitutional plans such as those of Gorres around 1820, in which the class principle was approved in principle and "historical liberalism" was distinguished from mere natural law and regarded as the only possible partner. On the other hand, however, it was stated that the third estate as a whole was "highly embittered," knowing that "it had fearfully outgrown its old relations" and feeling that "the time had come when a new contract between the classes of society had to be<sup>508</sup> concluded. It was obvious that a decisive upgrading of the third estate within a new class constitution would directly jeopardize the mode of operation of the traditional class principle, which was based on the supremacy of the noble element. The strengthening of the bourgeoisie, for its part, went hand in hand with a

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<sup>504</sup> Germany, 34ff., 43ff.

<sup>505</sup> divisibility, 132f

<sup>506</sup> Landstände, 12. On this development in German constitutional life in the pre-march period, see Vierhaus, *Von der altständischen zur Repräsentativverfassung*, esp. 188ff, and Scheu ner, *Volkssouveränität*, 319ff. who rightly emphasizes the particular strength of the monarchical element in Germany.

<sup>507</sup> Jarcke, *Verm. writings*, I, 183.

<sup>508</sup> *Deutschland und die Revolution*, Ges. Schriften, XIII, 79ff, ff. 126

This was accompanied by a weakening of the economic basis of noble existence. Radowitz saw the reason for the non-realizability of a genuine Estates constitution in the present time in the fact that the old clear distinction between manor and peasantry and between country and city had now disappeared; The change in real circumstances also explained his personal development from an adherent of the Estates principle to a supporter of the Constitutional principle, which, although not meant to be liberal, nevertheless fundamentally affirmed<sup>509</sup> the overall representation of the country by the Estates and their (co-)decision-making, not merely advisory, function. But even conservatives like the Gerlachs, who were not prepared to follow the same development but wanted to stick to their "genuine conservative constitutionalism"<sup>510</sup> at all costs, had to realize where the tide was heading: Our General Estates had become constitutional in their development" - and yet they were indispensable, for it seemed questionable "whether the old Standische constitution in Mecklenburg could be preserved in any other way than by having a constitutional representation, first beside itself, also, if one wants, above itself sets up".<sup>511</sup> This meant actually a declaration of bankruptcy, especially since, due to the verbiirgerization of society, it was an admittedly "difficult task" to "capture<sup>51</sup> the real estates in this atomistic chaos".<sup>2</sup>

Also in the certainty that the resurrection of the estates would not merely create or exacerbate the "rivalry of estates" but the "opposition of convictions," Stahl designed a constitutional model that would overcome the opposition between the (obsolete) estates and the (fundamentally unacceptable) representative and be based on the "constitutional principle" as a higher synthesis of the two.<sup>513</sup> The institutional details of this construction, in which "the estates no longer had special rights, but were to represent the general state of civil law," are not of interest<sup>514</sup> here. As far as their social content was concerned, Stahl believed that the nobility could "no longer be a closed and privileged class," and that he wanted to "eliminate the feudal pressure of the nobility against the peasant...". On the other hand, however, he opposed the idea that the bourgeois aristocracy, which was "just as much a part of the basic aristocracy," could not be "closed and no longer a privileged class."

<sup>509</sup> Fragmente, I = Ausg. Schriften, II, f418., 393f389., . cf. 444.

Thus E. L. v. Gerlach, Aufzeichnungen, II, 78 (the counter term is "false French constitutionalism," see p. 91). Statements explaining this standic concept are found in the cited Aufzeichnungen, II, 12f., 517, as well as in Leopold's Denkwürdigkeiten, I, f.83,93,100,282; cf. L. v. Gerlach, Nachlall, I, 201,236.

<sup>511</sup> L. v. Gerlach, Denkwürdigkeiten, I, (68529. 1851).10.

<sup>512</sup> The Gerlachs were also aware of 1848 the problem of re-functioning of the stands before, see a. a. and O., 116. E. L. v. Gerlach, Aufzeichnungen, 1421., 456.

<sup>513</sup> Mon. Princip, IV-IX. There, the substance of the polemic against Haller and the Haller school, which is elaborated in the philosophy of law, p. 11,2,332f., ff; cf. 365. I, 551,570.

<sup>514</sup> On this, see Philosophy of Law, II, 2, 272ff.

The idea was that the "rigid" social welfare system would be "mixed<sup>515</sup> into a money aristocracy," "as in France. In view of the actual social development, however, this request was tantamount to squaring the circle, and thus Stahl's plans remained practically ineffective; they did not even win any significant sympathy, since they could not satisfy<sup>516</sup> any side. This was not - or not primarily - due to Stahl's lack of courage, but to the state of affairs. Liberalism and conservatism, presidentialism and statism, bourgeoisie and aristocracy could not reconcile from positions of equal strength - the reconciliation came only when the aristocracy had lost the game, and then the optical exchange of a failed reconciliation in the past also arose. But when this past was still present, there could hardly be a tertium. This was proved by the July Revolution - and also by the English development, although it was "peaceful": nevertheless, a rupture took place here, too. Since England in this respect was not regarded as an exception by most conservatives of the century 19., it was not an exception.

was still regarded as a model of "organic" development, we are now being told that the the next section will show.

#### *b. The English model: transformations and ambiguities in its evaluation*

The conservative assessment of the English socio-political situation shows, on the whole, the unwillingness of conservatives, as conservatives, to make common cause with liberalism and willingly adapt to a development that would be under the sign of the supremacy of liberalism, although very many conservatives were quite willing to recognize the right of life of the bourgeoisie and of liberalism on condition that the general socio-political development would remain fundamentally under the control of the aristocracy. It is indeed impossible to grasp the respective conservative attitude toward bourgeois liberalism in a proper way if this crucial difference in perspective is not taken into account. In this respect, it remains characteristic that (most) conservatives, especially in the second and third quarters of the nineteenth century - in contrast to those who later conservative" - do not appreciate the "organic" transition from the status quo to the liberal-capitalist socio-political order in England, but on the contrary abandon their still fresh admiration for this country at the very moment when they regard this transition as (completed).

<sup>515</sup> Parl. speeches, 56,60.

<sup>516</sup> At least the hard core of the Prussian conservatives did not consider him trustworthy, see E. L. v. Gerlach, Nachlall, I, 188; 11, 766.



fact; thus, what prevails in their judgment is not (so much) the "organic" character of the development, but (exclusively) its direction. England became a widely recognized "conservative" model only when the aristocracy had already been (largely) absorbed into the new society and the new anti-socialist front of all owners had largely been realized. Then the retrospective impression could arise that the "organic" merger of conservatism and liberalism, which was supposedly paradigmatic in the English development, was a real historical possibility from the beginning, even if it was often missed.

The conservative glorification of the English system in the first decades after 1789 was not a natural continuation of a deep-rooted preference of the continental aristocracy for England, but a polemical-ideological act, which in turn opened a new phase in a disparate series of conservative statements on England. If many a monarchomach saw<sup>517</sup> the Elizabethan England alongside Poland or the Empire as an example worthy of emulation of a happy coexistence of crown and estates, the English revolutionary events of the seventeenth century must have instilled in the continental nobility suspicion of England. Because the memory of Cromwell was still fresh, the glorious revolution could not simply be celebrated on the continent as a victory of the Estonian forces against absolutism, especially since it was interpreted early on in terms of modern natural law and political demands - an interpretation that gradually produced the image of England that was able to<sup>518</sup> inspire thinkers like Voltaire from then on. Countering the free-liberal idealization of England, French nobles now complained about the capitalist thrift and attitude of the English nobility ("L'interet fait agir leur Noblesse, l'honneur seul guide la n6tre") and feared that the mixing of the stancle would turn<sup>519</sup> France into "la theater des revolutions, comme l'Angleterre.

This unfriendly view of England and its ruling class changed abruptly after 1789 for several reasons. First, the French emigrants discovered - especially at a time when they were in dire need of consolation, idealistic support, and visible confirmation of their present justification for existence and their historical future - that the aristocratic hierarchical social structure and way of life on the other side of the Channel had survived much more intact than they had previously believed.<sup>520</sup>

<sup>517</sup> See, for example, Beza, *De iure*, IV = pp. 55.

<sup>518</sup> About this development of the image of England in France during the 17th century see Dedieu, Montesquieu, ch. II-III.

<sup>519</sup> Carassone, Montesquieu, 229f., 226, 258.

<sup>520</sup> Baldensperger, *Mouvement*, I, f47.

Thirdly, the constitutional policy of England soon took on a concrete political character when it became clear that England was, and would remain, the unbending enemy of Napoleon and of all the revolutionary principles that he had embodied; In Germany, too, England's intransigent attitude toward Napoleon was a strong motive for conservative affection for that country.<sup>521</sup> And third, the constitutional debate on the eve of the Revolution<sup>522</sup> was already taking shape. And third, a broadly conservative interpretation of the English constitution was already taking shape in the context of the constitutional debate on the eve of the Revolution, but especially under the journalistic influence of Burke (who, as we know<sup>523</sup>, had to shift his political emphasis under the impression of the Revolution), which at least temporarily displaced the hitherto widespread free liberal interpretation. As an overtaking and processing of the English constitutional fiction that it was, this interpretation revolved around two points: on the one hand, it emphasized the role of the king according to the post-revolutionary political needs of the nobility; on the other hand, it strove to prove that the English constitution was based on a harmonious balance of all the factors at work in it. This equilibrium, which was supposed to be the embodied antithesis of any revolutionary unilateral action, is again presented as the natural product of organic development; but if organic development is possible at such a level and with such gratifying results, the revolutionary break with tradition appears all the more pernicious and odious. The commitment to the English model as a tangible example of the organic and quasi-inherent ability of the ancien regime to reform itself did not constitute a binding declaration of the nobility's intention to transform the ancien regime to any significant extent, but rather a polemical thesis in the sense mentioned above, and in this respect it contributed not to relativizing, but rather to idealizing the ancien regime, which had allegedly broken down abruptly and was thus prevented from fully developing its potential. On the other hand, the English model of a self-reforming and stable social organization inspired many conservatives, who were convinced of the urgency of a (partial) reform of the nobility in order to maintain their position of power<sup>524</sup>.

<sup>521</sup> Cf. Steig, *Kleist's Berliner Kämpfe*, 92ff.; on the conservative conception of England as a "Germanic nation" that continued the Germanic political tradition in the struggle against Napoleon and the Romanic principle, see McClelland, *German Historians*, 43ff.

<sup>522</sup> See, for example, Mallet du Pan, *Memoires*, I, ff159, who refers to de Lolme. The sense of this appeal becomes clear when we think of de Lolme's polemic against Rousseau's doctrine of representation, which is contrasted with the idealized English constitutional model (*Constitution of England*, II, 227ff., cf. 263ff.).

<sup>523</sup> See above chap. II, paras. 5 (esp. last paragraph) and section 3c of this chapter.

<sup>524</sup> For the English inspiration of Brandes, Rehberg and Stein see. Botzenhart, Stein, esp. 91ff., 103ff., 122f., 131ff., 160, who rightly emphasizes Stein's intellectual independence compared to Brandes and Rehberg; cf. also Ritter, Stein, I, esp. 152f., 164f., et seq. 168



Against the backdrop of this triptych (fiihlsrnaBige Anglomanie, antina poleonian affect, idealization of the English socio-political order with counter-revolutionary intent), A. In 1805, Miiller spoke of the "divine Bri tannia,"<sup>525</sup> while Gentz, in the same decade, praised the "Harrnonian completeness" of England and found<sup>526</sup> in it "the highest model of successful state organization. As early as 1796, Bonald present.ed a brief, substantive analysis of the English sociopolitical system, according to which England was a divided nation, with two "pouvoirs" and two

"pouvoirs". societies" competed with each other: the "societe politique ou rnonarchique" ruled politically, but at the same time it depended materially on the radically heterogeneous "societe de commerce" - a dualism that could be kept in balance for the time being, but in the long run had to end with the victory of one of the two. This view of the English system gained ground among French conservatives during the Restoration, especially since their liberal compatriots were simultaneously striving for a modernized revision of the pre-revolutionary biir-gerlich anti-absolutist interpretation of the English constitution.<sup>527</sup> Not coincidentally, Bonald resumed his criticism of England in his polemic against Mme de Stael in order to describe the devastating effects of the unstoppable rise of the "societe de commerce" in the neighboring country. He criticized the progressive atornisation of the community, i.e., the disintegration of the family unit associated with primogeniture, which in turn brought about "rnouvement" and "agitation. The dependence on a worldwide "commerce" resulted in the poverty of the population strata displaced from the land and in continuous wars to defend the economic positions that had been won and were now vital. The result is a social structure that is no longer traditional, and a dominated society.

class, which could no longer be the old nobility, i.e. this latter class would form the no „noblesse destinee a servir le pouvoir, mais un patriciat destine a l'exercer" .<sup>528</sup>

as well as Christern, Stiindestaat, 155 f( (who assumes, wrongly, that anglophile positions such as Brandes's indicate the real possibility of a development of Germany along English lines, without taking into account the serious socio-political differences between the two countries) and, above all, Vogel, Kritik, esp. ff.97,116 ff.196

<sup>525</sup> Letter to Gentz from =19.6.1805 Briefwechsel, 57.

<sup>526</sup> Letter to Muller from =22.11.1802 Letters, II, 392; Fragments, XXXVI, 17.

<sup>527</sup> Theorie du Pouvoir, I, =6,6 Oeuvres, III, f351(

<sup>528</sup> Observations ....., Oeuvres, VII, esp. f647., £661, 680; cf. Sur l'etat actuel de l'Europe, II = Oeuvres, II, and 286,Pensees, Oeuvres, VI, 39,45.

Montlosier, who is generally more sympathetic to the bourgeoisie and also thinks more highly of the power of the aristocracy and the social hierarchy in England than Bonald, also sees the revolution secretly at work here and hints at the workers' question<sup>529</sup>. The constitution of England, on the other hand, hardly appeals to him precisely because he finds its liberal interpretation basically correct: there is a genuine separation of powers, with sovereignty in the hands of Parliament; with such a weak constitution, England was actually doomed, had it not sought<sup>530</sup> its salvation in the expansion of trade. This was Montlosier's clear answer to the question, which moved his conservative compatriots at the time, to what extent it would be<sup>531</sup> advisable to adopt the English constitutional model in France. But he and Bonald <sup>532</sup> were not the only ones to reject such an introduction. Chateaubriand, too, did not consider the weakness of the executive or the crown in the English constitution to be worthy of imitation<sup>533</sup>; and de Maistre advised against an orientation toward the English model<sup>534</sup>, although, in contrast to Bonald, he initially belonged to the England enthusiasts<sup>535</sup>. However, there were still conservatives who remained more or less faithful to the Anglophilia that had prevailed until Napoleon's defeat and who opposed<sup>536</sup> the liberal interpretation of the English constitution with an aristocratic one.

The change of mood was equally noticeable in Germany.

bar. A. Miiller summarized it in 1816 in incomprehensible words: "We were mistaken, under the hopelessness of the years 1806-1812, in thinking<sup>53</sup> of England as the real foundation of European freedom and not *merely* as a point of support for it.<sup>7</sup>

„irte," Adam Smith's country and the economic doctrine and practice that emanated from it caused him considerable concern<sup>538</sup>; his admiration for Burke,<sup>539</sup> which never waned, could not prevent the firm impression that England was becoming more and more a "big city" in which the money economy and the market,

<sup>529</sup> Monarchy, V, ff.185

<sup>530</sup> A. a. IV,0., 391£, 398; cf. V, 153.

<sup>531</sup> -About these thoughts and attempts see Bastid, Institutions, esp. 32ff., 241f(

<sup>532</sup> Demonstration philosophique, XIV = Oe vres, VIII, 90.

<sup>533</sup> Reflexions politiques, XVIII = Oeuvres, XI, 254.

<sup>534</sup> Bastid, Institutions, n32., 4.

<sup>535</sup> See, for example, Essai sur le principe generateur, V- VII = Oeuvres, pp. 114-115.

<sup>536</sup> See, for example, Cottu, De la necessite, 32 ff. This tendency was obviously in the minority, as can be seen, by the way, from the downright Anglophobia prevailing among the Legitimists after the July Revolution (Tudesq, Notables, I, 229). Among other things, England seems to them to have become the land of a chaotic and inhuman capitalism, typical of which is Villeneuve, Economie, I, 22,24.

<sup>537</sup> Treatises, .196

<sup>538</sup> See, for example, the letter to Gentz dated7 . 10.1810 = Exchange of letters, 164.

<sup>539</sup> Brown, Burke, f182(

The author also noted that there were<sup>540</sup> forces at work that were diametrically opposed to continental landownership. Thus he came to the conclusion that there was a deep contrast between the still healthy political structure of the country and the "artificial factory system".  
stem,"<sup>541</sup> only to describe English foreign policy as revolutionary shortly thereafter.  
and to recall<sup>542</sup> the period around 1640 and the English roots of the arch-liberal United States. Gentz, for his part, already harbored the<sup>1814</sup>  
thought that the elements of popular sovereignty contained in the English Constitution, as manifested in the strong position of Parliament, would not fail to have an effect on the liberal movements of the Continent; and more than eleven years later he wrote that in the English case one could see the undermining of the monarchy <by democracy with nominal retention of the former<sup>543</sup>; especially to him the "lack of discipline" of the English press could not be  
be<sup>544</sup> a mystery to anyone. But even Gorres, who at that time was in favor of freedom of the press and for a  
Schlegel, who had begun to reconcile England with the bourgeoisie on a constitutional basis, believed that "strong seeds of destruction" were developing in the previously healthy England, which he attributed to industrialization and mechanization, the increase in population, and the intensification of the struggle between the "radicals" and the "stable"<sup>545</sup>. In the 1820s, Fr. Schlegel was much harsher in his criticism of England, although he did not offer anything essentially new in terms of content, but only took up the two basic motifs of conservative criticism of England: <the constitutional (division of powers, strength of parliament and weakness of the crown, so that English  
constitution is „nothing other than a constitution that is always prevented from breaking out.  
revolution"<sup>546</sup>) and the economic-social ("state materialism", industry and "credit revolution", which "seized most of the other states with  
and infected, and how the French military revolution made the rounds of Europe"<sup>547</sup>). Moreover, Schlegel thought that England was the cradle of the  
The two great obols of the modern age, namely the Protestantism of the state and the Protestantism of knowledge<sup>548</sup>.

Most conservatives saw the Reform Bill of 1832 as a confirmation of this pessimistic view of the English system and a cause for even greater concern. While in the camp of the German liberals, especially in the

As the "Germans" grew in<sup>549</sup> sympathy for England, conservatives expressed their conviction that the victory of the bourgeois industrial forces in this country would eventually open the door to the rebellion and tyranny of the fourth estate; and to the extent that <the Reform Bill was perceived as a radical break, the period of aristocratic rule from until 1688 despite the 1832 removal of the crown from power appeared to be basically stable and "organic. Not all conservatives, however, were able to suppress 1688 under the impression of 1832; on the contrary, some sought the roots of the most recent developments in the glorious revolution. Jarcke called it "disastrous and pernicious," not only for England, but for "the whole organism of the Christian occidental state system"; constitutionalism was born with it, so that after 1688 England was "no longer a purely constitutional monarchy," but "stood in the middle between it and the system of representation based on revolutionary foundations," which could be seen in the weak position of the crown; only the fact that <the parliament remained a statist body,> and the maintenance of "Germanic freedom in internal self-government" had "prevented the overthrow of England in the  
The abomination of... anarchy"<sup>551</sup>. Radowitz has the same judgment in the definition England was an "aristocratic republic" or "a republic surrounded by monarchical institutions"<sup>552</sup>; therefore, it would only be an "aristocratic republic" as long as it was surrounded by monarchical institutions.  
The self-government could not remain a "vital political body" „until the absolutist theory of parliamentary omnipotence had developed its full implications<sup>553</sup>. Self-government could in the long run not be a firm guarantee against  
offer this development, Radowitz said, referring to <the example of the  
United States<sup>554</sup>. He wanted to say that <the self-government is changing into the liberal-capitalist laissez-faire and is losing its standish-conservative sense. A spread of the materialistic-capitalistic attitude was also noticeable within the English nobility, which had "held on to the real side" (i.e. property and offices), while "the ideal side" (i.e. chivalry and honor) had been "more or less crippled" among them.  
German nobility<sup>555</sup>.

<sup>549</sup> See the good analysis by Bockenforde, *Verf. Forschung*, 74ff; cf. McClelland, *German Historians*, 69 ff, and Wilhelm, *Engl. Verfassung*, esp. 34ff, 42 ff, 73 ff. On early English liberalism in Germany, cf. Valjavec, *Entstehung d. pol. Stromungen*, 247ff.

<sup>550</sup> Scheel, *Berl. Pol. Wochenblatt*, ff.128

<sup>551</sup> *Verm. writings*, III, 274ff, 243, 272, 392 ff. 278,

<sup>552</sup> *Gespriiche ...* (1846), ed. writings and speeches, 20.

<sup>553</sup> *Gespriiche*, IV = *Ausg. Schriften*, I, 126.

<sup>554</sup> *Fragments*, I = *Ausg. Schriften*, II, 395f.

<sup>555</sup> *op. cit.*, 282f.

The triumph of liberalism and capitalism in England seemed to the continental conservatives to have reached its climax through the implementation of free trade. In 1850, Leopold v. Gerlach wrote, "In England, the revolution first takes hold of material conditions"; he noted that free trade ruined the landowners and expressed his contempt for the enslaved. The Conservatives around Peel<sup>556</sup>; nor was he the only one who so thought.<sup>557</sup> The unpleasant developments in the economic sphere, however, did not eclipse the interest in the constitutional aspect, since economic and political liberalism, capitalism and modern constitutionalism were considered to be related phenomena. In the same year, Leopold v. Gerlach predicted that England, like the rest of Europe, would become a "arrive at absolutism through constitutionalism"<sup>558</sup>; the Constitutionalism had "unnerved" England<sup>559</sup>. In this context, the difference no longer seems to be decisive, since the continental parliaments are "on a tabula rasa". While in England, the parliament "is constitutionally abolishing the old constitution"<sup>560</sup>; with the "terrible", "rapid overthrow of England", it would be "no wonder if the workers, who are already completely organized, take over the masters". instead of the lords and the commons<sup>561</sup>. Not everyone, however, saw This danger is considered to be imminent. The already mentioned and both sides The deliberate<sup>562</sup> differences of opinion on the constitutional question between the Gerlach circle and Stahl were also reflected in certain differences regarding the assessment of the English political system. Stahl does not simply want to write off the contemporary English parliament, but sees in it a realization of the sound constitutional principle as he understands it: this parliament is namely both a representation of all corporate interests, all property interests, and at the same time a national representation<sup>563</sup>. What he, like the other conservatives, dislikes about the English constitution is the subjugation of the crown to the parliament, i.e. the violation of the monarchical principle - but here, too, he is prepared to take note of mitigating circumstances. The weak position of the king in England, he thinks, is the product of an organic development, and therefore "for there it is not to be blamed," but there must be no question of imitating this "peculiarity" of the English constitution on the continent.

<sup>556</sup> De nkwaardigkeiten, I, 406.

<sup>557</sup> E. L. v. Gerlach, Nachlaß, I, (20026. 1849).8.

<sup>558</sup> A.a. O., II, (716 letter to brother Ludwig from 10. 29.1850).

<sup>559</sup> Denkwürdigkeiten, I, (83819. 1852).12.

<sup>560</sup> A. a. II, (O., 1324. 1853).2.

<sup>561</sup> A.a. II, O., (9728.1853).12.

<sup>562</sup> S. above note. 516.

<sup>563</sup> Philosophy of Law, II, (2,343

be<sup>564</sup>. This example shows that England could not be a conservative role model even if a fundamentally Anglophile attitude was assumed. Stahl, by the way, shared the general conservative view.

view that the Reform Bill had ushered in<sup>565</sup> the demise of England.

Despite all criticism of the general English development, many conservatives felt uncomfortable when they openly distanced themselves from England; it seemed to them as if they had to say goodbye to the most gentle realization of their ideal and thus to their ideal itself. When E. L. v. Gerlach heard his 1859 comrades in arms denigrating England, he remarked

he: "To me, this seems like a political suicide attempt"<sup>566</sup>. In some con

servative publications continued to cultivate<sup>567</sup> the comforting legend of England as the aristocratic paradise, but it remains significant that Leo

in a paper with programmatic intent went so far as to deny the exemplary nature of the English system in toto: its forms may be good for the English, but outside this country they were "only a kind of tyranny" and made<sup>568</sup> "the people sick. And v. Berg wrote to E. L. v. Gerlach in 1865: England is a run-down fallen country, that is historical.

to pursue ... Why portray it in a glory that it does not have?"<sup>569</sup>. From

this assessment to the outright HaB against the England of the Free trade and of finance capital, which was widespread in the 1890s in the League of Farmers,<sup>570</sup> leads a straight line. Significantly, England is no longer presented as a model by pure water conservatives, but rather by those,

The latter, while sympathetic to the aristocracy, were convinced of the inevitable end of its traditional rule and wanted it to be absorbed into the new society as painlessly and honorably as possible; they understandably praised the openness of the English aristocracy to all others.

classes<sup>571</sup>. Although a diffuse Anglophilia remains in the circles of the

But it refers rather to the atmospheric and the stylistic, and it is deliberately not transferred to the political sphere, unless the Anglophiles in question harbored certain liberal sympathies<sup>5</sup>. Thus idealized aristocratic England definitively ceases to be the specific real point of reference for conservative dreams and hopes, and this precisely at a time when both conservative England and conservative England were developing.

<sup>564</sup> A. a. IO., 357; Mon. Princip, ff; 2 Parties, ff. 142

<sup>565</sup> Parties, 161(

<sup>566</sup> Nachlaß, I, 408.

<sup>567</sup> See, e.g., Staatslexikon, VII (1861), (56 (Art. English State Constitution).

<sup>568</sup> What is conservatism? = Nominalistic thought spans, 52.

<sup>569</sup> E. L. v. Gerlach, Nachlaß, II, 1211.

<sup>570</sup> Anderson, *Anti-English Feeling*, 153.

<sup>571</sup> S.e.g. Schaffie, *Adelsbegriff*, 194

<sup>572</sup> Gollwitzer, *Standesherren*, 178.

also dissolved the specific conservative worldview. It was not without reason that Fontane had a person say in his "Stechlin" (chap. 27) that England had now become "the exemplary country for all parties".

## 6. The ideological extrapolations of the monistic state or Society view

### a. Theological

We have already pointed out with some emphasis that the ideological positions of the conservatives do not originate from an anthropological-archetypical pre-programmed way of thinking, but are ideological extrapolations of theses with a concrete socio-political reference or generalized answers to questions posed by<sup>573</sup> the socio-political constellation. In fact, the turn of conservatives *as* conservatives to theological questions was neither the result of a professional interest nor the source of groundbreaking achievements in this field; the intensity of this turn stemmed from the connection of theological problems and socio-political politics, whereby precisely <the polemical political need to appear in the name of God and thereby to provide oneself with a final justification allowed theology and politics to merge. The reference to God arose automatically in the attempt to defend the *societas civilis*, since it was assumed that the law on which it was based was not man-made but given by God since the creation of the human race. The attack against <the law> had therefore to be equated with the rebellion against God, especially since the conservatives reserved for themselves the competence to interpret the will of God in a binding way; and since, according to their interpretation, God's will was reflected only in the law of the *societas civilis*, the defense of God coincided with the defense of *this* law without further ado. In this perspective (already since the struggle against Machiavelli in the 16.-17. century) every position appeared as open or hidden atheism, which amounted to the fact that law was a product of human reason and human sovereign determination. For any such position implied that there was no God directing <the development in our world> and this, in turn, could be the case for two reasons: either because there was no (personal) God or because he did not interfere in worldly affairs. Thus arose the double front

<sup>573</sup> 3 s. o. Chap. I, Sect. a1., Chap. III, Sect. 1.

The main difference between the two is not ignored, but it is regarded as merely quantitative and ultimately irrelevant. The differences between the two are not ignored, but they are regarded as merely quantitative and ultimately irrelevant. It is the same, Bonald thinks, whether a modern philosophy is "athee de principe" or "athee de consequence" (like deism); Either way, it exhibits that basic feature of modern philosophy which makes it atheistic, namely, the will to explain the world immanently, without any recourse to God's action.<sup>574</sup> By preaching atheism and republicanism at the same time, this philosophy substitutes reason and the (man-made) law for religion and (God-ordained) authority. By earthly, of course, is meant not nature in general, but man *par excellence*, who is the only one in the whole creation who can challenge God.<sup>575</sup> Godlessness consists essentially in the fact that man considers himself absolutely autonomous and sovereign (in concrete: sets up a law other than the law of the *societas civilis*), recognizing no lord above him and destroying the authorities on all levels, the metaphysical as well as the social, with one blow. The rebellion against God, then, necessarily goes hand in hand with the doctrine of the equality of men among themselves and with the doctrine of the sovereignty of the people.<sup>576</sup> This brings us back to the already discussed<sup>577</sup> motif of hubris, whose theological illustration is none other than the figure and history of the devil; the devil is "the first revolutionary, since the actual satanic character consists in a reverberation of everything that is above him, and only because it is above him"<sup>578</sup>.

From the point of view of conservative theology in its aforementioned socio-political connotations, it appears to be completely equal with which philosophical means and technical arguments the dethronement or the death of God is carried out. Idealistic-spiritualistic and materialistic-pantheistic philosophies can equally justify atheism and in this respect have a complementary effect, which is why their differences from each other and their struggles against each other are considered to be irrelevant or even misleading. The very own, ontologically understood autonomy of the human spirit must (factually) exclude God just as the assumption of the ontological priority of matter does; and where it is not about the defense of the (human) spirit, but about the defense of God, there is the

<sup>574</sup> De la phil. morale et politique du XVIII- siede (1805) = Oeuvres, VII, 66 („la philosophie moderne n'est autre chose que! 'art de tout expliquer, de tout regler sans le concours de la Divinite"). Cf. La Philosophie et la Revolution (1810) in the same volume, 535-539.

<sup>575</sup> Theorie du Pouvoir, I, 4 4, = Oeuvres, III, 244.

<sup>576</sup> Baader summarizes this complex of thoughts typically, Schriften, Anm. 72

<sup>577</sup> See above section 3a of this chapter.

<sup>578</sup> Baader, comments, 467.



The difference between idealism, which implies the divinization of man or the complete incarnation of God, and materialism or the pantheistic dissolution of the divine personhood is quite equal. If rationalism means the primacy of man and of the human ratio as the originator of an autonomous order, then from the conservative point of view it is

in the same breath with atheism and the "so-called philosophy of the

Matter" and rejected.<sup>579</sup> This way of looking at the matter causes the attitude of theologizing and philosophizing German conservatives towards it.

the representatives of classical German philosophy. Some of these conservatives display a keen sense of the political implications of philosophical theories and draw parallels between the practical French and German philosophies.

and the "German philosophical Sansculottism". Baader, to whom we owe<sup>580</sup> one of these profound parallels, even stoops to the assertion:

If the Germans lagged behind the French in the practice of the revolution. (They nevertheless) formed the theory of this bad practice more fundamentally and hereby more criminally than their neighbors"<sup>581</sup>. He substantiates this

his view by pointing to two philosophical positions which prima vista logically contradict each other, but are nevertheless perceived as equally dangerous for the Christian doctrine of God: Fichte absolutizes the human

spontaneity" and does not regard man as a mere executor of the divine law laid down in him, but as a sovereign lawgiver and therefore

as God, while Schelling valorizes the material world by letting it emerge from<sup>582</sup> God as <lessen EntauBerung>, immediately and eternally. Schlegel, for his part, complained that philosophy substitutes the Absolute for God,

this "dead, abstract concept", this "dead abyss of divine truth", in which the "living God" of Christianity and his revelation are to be found.

It seemed to him irrelevant whether this absolute was<sup>583</sup> defined as absolute I-ness, pantheistic natural allness or absolute reason.

This is written already under the impression of the meanwhile completed Hegelian system - of which, by the way, Schlegel friih thought that in his atheist-

<sup>579</sup> See e.g. Radowitz, *Fragmente*, I = *Ausg. Schriften*, II, 158( Cf. above para. 3a of this chapter.

<sup>580</sup> *Comments*, 455.

<sup>58</sup> *Schriften*, (70 The highly interesting history of the political reception of classical German philosophy has yet to be written. It is by no means exhausted in the historical fate of the Hegelian-inspired currents, and, moreover, it should include the hostile statements.

<sup>5</sup> <sup>82</sup> *Be merkungen*, 445 ff. Cf. Baader's correlation of rationalism and materialism on p. For all his<sup>477</sup>. sympathy for Hegel, Baader could not refrain from judgment, Hegel's philosophy, too, was under the motto "non serviam" and could "only be passed off as being in contract with Christianity through incomprehension" (*Ober die sich so nennende* , ...note).<sup>516</sup>

<sup>583</sup> *Philosophic of History*, XVIII = *Works*, IX412., 413,425.

In the first place, the German philosopher's view of the world, with its sophistry and in the unpleasantness of its all-encompassing rationalism, confused Satan with God 584 - and thus retrospectively summarized the entire philosophical development in Germany. Still around, however, 1800 when

While this development was only beginning to emerge, the conservatives were concerned above all by the strong tendency toward what they saw as an unaccompanied, revolutionary subjectivity and as an expression of the new autonomous and sovereign humanity. This was the goal of A. Muller's early criticism both of Fichte's subjective idealism, which in his eyes was "nothing but the quintessence, the highest peak of enlightenment," and of Tieck's "romantic rage" and "sentimentality.

political-philosophical perspective<sup>585</sup>. The subjective-revolutionary Muller presents Schelling's objective-natural philosophical approach to the

Schelling is and remains the first," he exclaimed<sup>586</sup>. The same opinion is shared by his friend Gentz, who criticizes Fichte's "idealism," i.e., the subjectivity, "that is Nothing Real", and also takes offense at the Fichte-attachment of the Schlegel-circle, and instead of <lessen Kant's comprehensive gleichge

Schelling's philosophy: this "embraces and penetrates the world and grinds out what is divine in nature and in man"<sup>588</sup>. In the

In the late phase of the development of classical German philosophy, the conservatives sought in Schelling a philosophical rival not to revolutionary subjectivity (theory), but to the now victorious

and even more radically (re)interpreted Hegelianism<sup>589</sup>. The best known

One example of this is Stahl, who sees in Hegel's "pantheistic system" the disappearance of personhood and freedom. Here, man is dissolved in the determinations of thought, he forms a mere transitory stage and does not act out of his own determination, while God loses his personhood in his identification with the universe, so that he must first and only through man come to his consciousness. Stahl accuses the leftist Young Hegelians of having completely lost the Hegelian respect for the objective and of constructing it exclusively on the basis of the subjective, so that God becomes exclusively an anthropological product and a stage of world production of consciousness; but on the other hand, he argues that God does not act as a person, but only through man.

<sup>584</sup> *FragIDente* (1821), *Works*, XX II , 69.

<sup>585</sup> Letter to Gentz from =25.6.1803 *Briefwechsel*, 16(

<sup>586</sup> Letter to Gentz from =20.2.1803 correspondence , However, this 8.judgment was little later modified by pointing out this or that one-sidedness of Schelling, but not withdrawn. See the teaching *VOID Gegensatze* (1804) and the u5.. 7. Lecture *uber die deutsche Wissenschaft* (1806), in: *Schriften* , II, bzw.206, I, 71(, f80.

<sup>587</sup> Letter to Brinckmann dated4 . 25.1803 = *Letters*, II, (122

<sup>588</sup> Letter to BrinckIDann from =8.10.1803 *Letters*, II, (166cf. p. 254( ).

<sup>589</sup> Already A. Muller was 1828 concerned about "Hegel's influence in Berlin" and recommended against it the teaching of Catholic authors like Bonald and de Maistre; letter to Gentz *VOID* . 281.1828 = *Letters*, II, 443.



the Hegelian system itself had given<sup>590</sup> aniaf to this interpretation. So if rationalistic hubris consists in the fact that reason is no longer means and organ, but the source of knowledge, which finds its full content not outside it, but in its own essence alone<sup>591</sup> then this hubris in the Hegelian philosophy has already reached the summit. In this fundamental question Schelling differs from Hegel in that he adopts the "historical view" and an objective world outside the subjectivity of consciousness. (hence also his criticism of Fichte)<sup>592</sup>; through this, Stahl wants to say, the will and the sovereign revolutionary will of the subject are limited. Stahl, however, does not claim that Schelling is a representative of Christian theism; he obviously does not see him as more than a counterweight to Hegel, and this remains characteristic of the ambivalent attitude of the conservatives themselves toward the more pious products of classical German philosophy. That even Schelling could not fully satisfy the wishes of conservative theology is shown by E. L. v. Gerlach's judgment of Schelling's lectures in Berlin in the winter of 1841/42, which were supposed to eliminate the left-Hegelian blasphemia: "I had the impression that at Schelling's Christian spiritual needs were in conflict with pantheistic fundamental views".<sup>593</sup>

Conservatives spoke of "pantheism" either in the literal sense of the word, i.e., to denote God's identity with the universe,<sup>594</sup> or in terms of Hegel's incarnation of God, i.e., the

God's absorption in the totality of self-consciousness.<sup>595</sup> Beyond that

However, they used this term in a somewhat peculiar and iridescent, yet very characteristic way. In this use of the word, "pantheism" stood for the cult of this world as the only ontologically given or at least practically relevant reality - for the „deification of life in its earthly dimension.

Appearance"<sup>596</sup>. After the elimination of the personal God remained also nothing

Either the divine did not exist at all or it had to be rediscovered in this world in the form of an earthly substitute for worship - and thereby interpreted and perceived in a completely different way than in the conservative sense. If the dependence on the personal, sensual God ceases, then earthly greatness and values become an end in themselves, whereby they are

<sup>590</sup> Philosophy of law, I, ff, 458464f, 483ff

<sup>591</sup> A. a. 0., 92.

<sup>592</sup> A. a. 0., xvi, 377ff

<sup>593</sup> Records, I, 303.

<sup>594</sup> In this sense, E. L. v. Gerlach accuses Schleiermacher of pantheism, Aufzeichnungen, I, 214.

<sup>595</sup> In addition to Stahl's just quoted annotations, see Radowitz, Fragmente, II = Ausg. Writings, III, f65

<sup>596</sup> Thus the definition of Radowitz, Neue Gespräche etc., II = Ausg. Schriften und Reden, 176.

but are no longer subject to that law which was traditionally connected with the conception of the aforementioned God. Thus, the earthly life remains authoritative, with the human will as the sovereign creator of it and as the founder of new law. The following passage should clarify this meaning of "pantheism":

...These misunderstood words are transformed under one's hands into natural substances or gods, to which divine and human law cannot be applied, but which are regarded as monstrosities or gods.

Leviathans are judged by their own whimsical characteristics mis

sen. In this way, the "vice of patriotism"<sup>597</sup> arises from pantheism. But this pantheistic deification of earthly greatness has another important

The consequence of this is that the otherworldly God is the guarantor of a certain hierarchical order. Since the otherworldly personal God represented the guarantor of a certain hierarchical order, his elimination entails the collapse of this order. In its place there is now a sum of independent individualities, which do not obey any higher authority in common and are basically equal; this idea is valid for the coexistence of peoples, cultures and religions (and it is skeptical), but it is equally valid for all individuals who make up a nation, and then it implies that there is no such thing as a "nation".

equality of everyone into everyone and thus the principle of popular sovereignty.

This effect of the "negatively flattening and graying pantheism"<sup>598</sup>, in which the concrete connection between metaphysical statement and

The principle of the sovereignty of the people is nothing more than a pantheism:

The principle of the sovereignty of the people is nothing more than an outgrowth of pantheism. Whoever believes in the living, personal God, knows that He alone governs the world; he recognizes His order in all existing legal relationships.

...Unbelief, pantheism, on the other hand, which regards the whole of the world as God, without knowing the personal, living and all-powerful governor, sees in all these forms only coincidence or arbitrary arrangements of human wisdom.... Therefore, he cannot find himself in the apparent injustice of differences of status, of unequal distribution of wealth, caused by the human condition, but he wants to have equal rights for all people already here on earth.<sup>599</sup>

Leo was obviously thinking of pantheism in this broader and multidimensional sense when he wrote that "the whole atmosphere of the German mind during the first fifty years of this secular period" was "pregnant with pantheism. In the meantime, however, the conservative struggle against pantheism, although it had been a

<sup>597</sup> E. L. v. Gerlach, Aufzeichnungen, II, 297; cf. I, as well as 397, the passage mentioned in the previous note.

<sup>598</sup> Thus E. L. v. Gerlach, Nachlass, I, Cf 197.. Tocqueville's Überlegungen zur Verfassung der Demokratie. The first part of the book is devoted to the history of the Democratic people for pantheism (De la Dém. en Amer., II, 1, 7).

<sup>599</sup> Neue Preussische Zeitung, No Beilage 54, 1.9.1848..

<sup>600</sup> Letter to E. L. v. Gerlach from Nachlass, 3.1.1853, II, 827.

The first one is the more powerful, but equally dangerous brother of pantheism, namely the deism. Although the latter allowed the personal God to exist in the background, it valorized the earthly in its own way by placing it exclusively under the control of the laws of nature and did not want to know anything about a direct intervention of God in human affairs. Since the conservatives were very eager to establish a connection between the philosophy of the Enlightenment and the French Revolution, they were also eager to take up the struggle against deism. This struggle

had also been waged by theologians and physical theologians during the pre-revolutionary period, but now it is politicized in the sense that it is brought into close and explicit connection with political positions and appears as a structurally necessary aspect of a comprehensive ideological attitude. Thus it is not surprising that Burke already opposes the deistic neutralization of God and wants to see his effect at every corner of the processes of nature and of human things: "the Creator never can be absent from the minutest as no more than from the greatest of his Works.... the whole scale of Nature is subservient to a moral end ..."<sup>601</sup> In this

attempt to bridge the deistic gap between God and nature, Burke sometimes - apparently under the rhetorical impression of the Enlightenment divinization of nature, which had found its theological counterpart in the theology of physics - sounds quietly pan(en)theistic, e.g. when he speaks of<sup>602</sup> God and nature in their close interaction as homogeneous forces with identical purpose and identical mode of action. Admittedly, the approach of God and nature is kept within clearly visible limits, since it does not appear desirable per se, but only insofar as it is supposed to prove the absolute and every moment anew confirmed conformity of nature with God's commandments, by which, according to the conservative view, the<sup>603</sup> direct divine origin of the human counterpart of the natural order, i.e. of the standard social hierarchy, is made plausible. Since, because of the traditionally close connection between the defense of the legal conception of the *societas civilis* and the defense of God, it was precisely the *divine* sanctioning of the status hierarchy that was important, the conservatives could not use a *naturalistic* legitimization of noble

rule, in which God would have been excluded as much as in those deistic constructions, which many opponents of that rule agreed with.

<sup>601</sup> To a stranger (1795), Works, VIII, 364.

<sup>602</sup> Evidence in Jensen, Welt- und Staatsbild, 166 ( Cf. Reflections, Works, III, 284 (Nature and Revelation).

<sup>603</sup> "The awful Author of our being is the Author of our place in the order of existence," Burke, Appeal .... See Burke's letter to Laurence of 11 June 1796 = Correspondence, IX, 48 ("the God of law and order") and to Span of 23 April 1778 = Correspondence, III, 434.

tions<sup>604</sup>. By assuming that the constant active omnipresence of God in nature and history benefits their own cause, they must distance themselves both from the deistic limitation of this omnipresence and from its pantheistic extension, which deprives it of the character of a directed action. This double aspect makes itself felt in Donoso Cortes' characteristic formulation: "puede afirmarse, sin caer en el panteísmo, que todas las cosas están en Dios y que Dios está en todas las cosas".<sup>605</sup>

In view of the socio-political reasons that urged conservatives to theologize, it was natural to regard the whole discussion of the Revolution as essentially theological and to translate it into the language of theological problems. This tendency was reinforced by the impression that the Revolution itself was a kind of (bad) religion, since it a) touched the religious foundations of the polity (with destructive intent), b) was international in character, and c) displayed<sup>606</sup> a sectarian and fanatical spirit. In addition, it was claimed that revolutionary democracy was basically a "caricature of Christian truths," such as the equality of all men before God, etc..<sup>607</sup> Of course, such comparisons, which would eventually compromise the "true" religion, could not be taken too far, and so they remained rather sporadic. Conservatism could not and was not allowed to deal with the Revolution through the possibly self-murderous means of ideological criticism; instead, this confrontation took place on the level of analogies between the theological-metaphysical and socio-political - analogies. These analogies were based on the simple and convenient assumption that, since one's own cause was based on God, the enemy must be godless, and his (blasphemous) conception of God must determine his (condemnatory) actions, just as the (true) conception of God could only motivate and sanction actions in the conservative sense. The attempt to construct a precise analogy between the theological-metaphysical and the socio-political thus arises from the conservative desire

<sup>604</sup> This explains the reservations of many German conservatives against Haller, who had not sufficiently asserted the *göttlichen* character of the natural order (so E. L. v. Gerlach, Nachlaß, I, 30, u. Aufzeichnungen, I, 102, 127; cf. already Fr. Schlegel, Signatur, I = Werke, VII, 525). It is not of interest here whether this impression was justified or not (after all, Haller speaks of God as Schöpfer und Lenker der Natur often and clearly, see, e.g., Restauration, I, 340, 392, 396; II, 378); times had become difficult and even a free way of speaking or a largely secularized use of language could entail ideological complications. On the question of conservative reservations about Haller, cf. also u. in this section unter c.

<sup>605</sup> Ensayo, I, 1 = Obras, II, 499. Cf. the historically interesting late polemic against the *causas secundae* on p. 539.

<sup>606</sup> Burke, Thoughts on the French Affairs, Works, IV, 319; On the Policy of the Allies, Works, IV, 449 ( Cf. generally Barth, Idee, ff. 76).

<sup>607</sup> Radowitz, Fragments, I = Ausg. Schriften, II, 274f., cf. (211).



of a subjugation of the latter to the former, on the assumption and condition that God thinks conservatively and the conservative thinks divinely, while on the other shore it is just the other way around. In the interest of proving that the noble-dominated social organization is anchored in the divine will, indeed in the essence of God, Bonald had already worked out<sup>608</sup> a structural parallel between God, man and *societe naturelle* or *politique*, or between theology, anthropology and social doctrine. Now, however, the structural connection of these levels within one's own ideological attitude implied that the enemy, too, had to<sup>609</sup> profess an equally closed construction, albeit with reversed signs. On the basis of this view of the structural coherence of the ideological levels of friend and foe, Bonald arrives at the coupling of democracy or Jacobinism and atheism, royalism (= conservatism) and theism (= theism).

constitutionalism, and deism<sup>610</sup>. This threefold concept, formulated as early as 1805, is

Analogy was often repeated or varied during the following decades<sup>611</sup>. With systematic intent and within a systematic context, the

It was resumed by Stahl and<sup>612</sup> Donoso Cortes<sup>613</sup> under the impact of 1848.

Finally, it must be remembered that theism and atheism go beyond all analogical constructions that have been worked out at the desk.

<sup>608</sup> *Theorie du Pouvoir*, I, =I,1 Oeuvres, III, ff.23

<sup>609</sup> Cf. theses like: "la philosophie moderne confond, dans l'homme, l'esprit avec Jes organes; clans la societe, le souverain avec Jes sujets; dans l'univers, Dieu meme avec la nature", *Legisl. Prim. (Disc. Prelim.)* = Oeuvres, I, 165.

<sup>610</sup> *De la philos. morale et polit. du XVIII<sup>e</sup> siecle* = Oeuvres, VII, 79.

<sup>611</sup> Radowicz, for example, calls Jacobinism "political atheism," *Fragments*, I=.

A parallel between atheism and democracy is also established by Baader (*Ober das <lurch unsere Zeit... , 84 note \*\**), who furthermore adopts the comparison of pantheism and centralized state undertaken by "Avenir" (*Schriften*, 247); elsewhere he speaks of a correspondence between the mechanical, impersonal, unfriendly God of the philosophers and the likewise mechanical etc. modern state (*Schriften*, 391).

<sup>612</sup> *Parties*, 108ff., 178: what begins with liberalism as a deistic "detachment from the fear of God, deep profanity and the rule of material interests" culminates in the democratic apotheosis of the human species, which takes the place of God. This substitution of God <by> humanity or the people has already been pointed out very friih by conservatives, e.g., Barruel in 1791; see the passage quoted by Beik, *French Rev.*, 48. <sup>613</sup> In a first formulation of this analogy (*Discurso sobre Europa*, Obras, II, 459).

Cortes had easily connected liberalism and deism with each other.

However, he made a distinction between pantheism as an antithesis of the republic and atheism as an antithesis of anarchy (= communism). This distinction is missing in the *Ensayo* (11, 8-9 = Obras, II, 595ff.), where only liberalism or deism and atheism are mentioned. socialism or atheism. In accordance with the general conservative view, Cortes also thinks that atheism consists both in the direct denial of God and in his ide ntification with humanity.

The same people, who had been the main supporters of the Republican Party, also served in existential earnestness as party flags and symbols of allegiance. After the ultra-general Donnadieu broke the republican resistance in Grenoble with the utmost severity (4.15. 5. 1814), he reported to Paris: "Long live God! For three days the blood has not stopped flowing. Long live the King! The corpses of his enemies cover all the streets in the area of Grenoble"<sup>614</sup>. In response to this, the saying of a refugee from Baden in the Zurcher Exil, according to which the great guiding idea of the Baden Revolution had been: "there is no God"<sup>615</sup>.

## b. Anthropological

If conservative theology is an ideological extrapolation of the postulate of the divine origin of law, i.e., of the impossibility of its sovereign establishment by man, conservative anthropology is shaped around the axis of the related principle that law cannot be a work of autonomous human reason, because man is not a mere rational being. Conservative anthropology, in other words, aims at questioning the existence and the effectiveness of that human capacity which, according to revolutionary rationalism, should be the real bearer or originator of the creation of law on the basis of purely this-worldly superiors and goals. Burke's views in this regard, which were characteristically established decades before the revolution, were groundbreaking for conservative thinking after 1789. In 1769, for example, they were summarized as follows: politics ought to be adjusted not to human reasonings but to

human nature; of which the reason is but a part, and by no means the greatest part."<sup>616</sup> When Burke took up his fight against the revolution, he put this thought with the foreground; of the revolutionary reason, which was a rupture with the natural order of things, he countered this with the harmony with nature, „which is wisdom without reflection and above it"<sup>617</sup>. From the shallow. and cold, in anthropological terms rootless and

The difference between this wisdom and the revolutionary wisdom, which is necessarily violent in its external effect, is its moral content and its on the other hand by its firm anchorage in the nature of the human being. It therefore goes rnwith virtue without further ado<sup>618</sup>, it coincides rnwith the natural sense of wrong and right"<sup>619</sup> and it springs from the deep well of

<sup>614</sup> *Citation Hermes*, Geschichte, I, 30.

<sup>615</sup> Bekk, movement, note.17

<sup>616</sup> *Observations on a late Publication*, ...Works, I, 398.

<sup>617</sup> *Reflections*, Works, III, 274. Cf. *Letters*, ...III = Works, V, 407.

<sup>618</sup> See the formulations in: *Reflections*, Works, III278,297,356,, 396,559.

<sup>619</sup> A. a. 0.,339.

moral sentiments, feelings of humanity, the moral constitution of the heart"<sup>620</sup>. It therefore possesses both ethical and cognitive qualities at the same time. value, since "to feel inwardly"<sup>621</sup> is more valid than *merely* "to know. Burke's wisdom or Reason (if he uses this word in a positive sense) encompasses, in other words, the broader and deeper totality of human faculties that existentially mediate the knowledge of the true and, in comparison to the pure capacity for thought, the knowledge of the true.

determine<sup>622</sup> <las actions accordingly. Especially in this their multilayered anthropological roots, reason, understood in an anti-intellectualist way, becomes the basis of social life. For religion, which constitutes "the basis of civil society," is found in the deeper layers of human existence,

whereas atheism is not<sup>623</sup> *only* against the (healthy) intellect, but also against "our instincts". But what is in the instincts themselves, that is in the anthropological constitution itself, does not *have to be* discovered anew each time on the basis of personal observations and judgments; it is given, namely as socially mediated prejudice, <las contains and expresses the quintessence of collective, historically preserved reason. By permeating the whole existence unreflectively and imperceptibly, <las prejudice forms by far a more effective and stable ethical motivation than the "naked reason" and somit is able to hold<sup>624</sup> <las community together without coercion. From this point of view, however, religion, this ideal "basis of civil society," *must* appear as "the grand prejudice, and that which holds all the other prejudices together," while the atheistic nature of Jacobinism is already apparent.

in his intellectualism, that is, in his rejection of the prejudice thus raised<sup>625</sup>.

These theses were promptly taken up by the contemporary conservatives and became a topos of counter-revolutionary argumentation. In Germany, two of Burke's good connoisseurs, namely Gentz and Rehberg, made a strong case against Kant's a priori or purely rational conception of morality and the moral.

<sup>620</sup> A. a. O., 338.

<sup>621</sup> A. a. O., 350.

<sup>622</sup> Cf. Hilger, Burke, 13f. The term "artificial reason," which Burke also uses as a positive concept of reason, is taken from Coke (see above, chap. II, para. 4d) and means exactly the same thing as in him, namely the demand for the subjection of individual reason to the historically formed, crystallized in the institutions of the societies. collective reason. Artificial" does not represent the opposite of "organic" or an "artificial" concept. The term "artificial reason" is not a synonym for subjective and arbitrary ("against nature"), but the counter term of "artificial reason" is the revolutionary "natural reason"; its bad naturalness, i.e. its crudeness and randomness, is opposed by the insight of artificial reason into the structural law of what has been created by man in a gradual and artful way in a short time.

<sup>623</sup> Reflexions, Works, III, 350, 351.

<sup>624</sup> A. a. O., 347.

<sup>625</sup> Letter to W. Smith (...1795), Works, VI, 367.

autonomy, as well as natural law and human rights, asserts the versatility of human nature, which makes the realization of any unilateral intellectual tualist theory.<sup>626</sup> But also the French classics of the conservatism were not inferior in the struggle against revolutionary intellectualist rationalism. De Maistre believed that good legislators did not act on the basis of cold a priori considerations, but "par instinct et par impulsion", and at the same time he implored the people not to rely on that "rai sonnement" which banishes "raison", but on "instinct infallible de la conscience" to leave<sup>627</sup> Reason (in the positive sense) and ethically charged Instinct are thus synonyms with him, as they were with Burke. Bonald sang <las praise of prejudice in a specially written essay, to which he added decisive social functions.<sup>628</sup> It is not worthwhile here to discuss the variations of these stereotypical motives. Nevertheless, one philosophical implication of the conservative campaign against the "cold" revolutionary reason shall be discussed in brief, since it is connected *with* broad - earlier, contemporary and later - intellectual-historical currents. Since the conservative thinkers on the one hand deny the anthropological primacy of the intellect, while on the other hand they believe in the ability of man to see through the divine laws of the world order at least to a practically sufficient degree and to act accordingly, they come to the assumption that there are higher possibilities and forms of knowledge, which exceed the powers of discursive thinking and are alone capable of proceeding constructively and progressing where "mere" thinking cannot. the "mere" thinking would not only fail, but would also destroy; from an epistemological point of view, the opposition between revolutionary and conservative attitudes thus appears as that between lower and higher cognition. In Burke's double use of the concept of reason (soon in a positive soon in a negative sense) this is already implied; but it becomes explicit in A. Miiller's philosophically ambitious contrasting of concept" and "idea". Whereas concepts are products of understanding or abstract, stiff definitions and refer to things that have no movement, no inner life, and no organic history, ideas are able to grasp realities that move and grow; thus, the state and "all great human affairs," whose "essence cannot be expressed in words or words at all," can be defined in terms of their "essence.

<sup>626</sup> Cf. Jarcke's later polemic against Kant, Verm. Schriften, III, 5 ff.

<sup>627</sup> Considerations, VI u. VIII = Oeuvres, Sp. resp. 4969.

<sup>628</sup> Sur Jes Prejuges (1810) = Oeuvres, VII, 570-577. Cf. the analysis by Spaemann, Ursprung, 136 ff. Later, in the 19th century, French Catholics who wanted to fight against revolutionary rationalism had to consequently profess fideism and deviate from thornism, which brought them the millstone of the church; about Bautain and Bonnetty see. Ferraz, Histoire, II, ch. VI, p. ff. 317

Definitions wrap up or press in", only <through ideas cognize<sup>629</sup>. If we now consider the distinction between higher and lower cognition from the side of the respective capabilities of the cognizing subject, it turns out that the higher cognition of the idea is not <by mere reason, but <by a faith, which, however, "can never and nowhere be separated from reason"; this faith, in turn, does not refer to individual things, but to a whole, to "a certain world order"<sup>630</sup>. Coleridge also made the reference to the universal order and the consideration of individual things as they are in this order the essential characteristic of "reason"; this is precisely what distinguishes it from "understanding," which only examines phenomena in their isolation and then classifies them. This distinction between Reason and Understanding corresponds to the juxtaposition of "Idea" and "Conception", which is directly reminiscent of Miiller: if the former thinks from an ultimate purpose and accordingly undertakes generalizations, the latter remains with the means and the desti

The work of the "Understanding", <whose works, of course, had<sup>631</sup> been enlightenment and revolution>.

Let us now return to the conservative view of the secondary character of the intellect and consider its close connection with the theses of the divine origin and the sociability of man. These two theses are equally opposed to the claim of human reason to shape the world sovereignly or to construct it a priori, since both assert the original anchoring of reason in supra-individual contexts independent of human will. It is precisely the insight into these connections and their willing affirmation that should allow human reason to shed any intellectualistic character, to escape the danger of hubris, and thus to become "true" reason, i.e. to remain in constant contact with the deeper layers of human existence, which are most difficult to detach from the aforementioned supra-individual connections. In this perspective it becomes understandable why the conservative argumentation against the revolutionary claim to create law on the basis of the precepts of autonomous reason must culminate in the theses of the divine origin and the sociability of man. The objective binding of man to his Creator and to the world order created and maintained by him is supposed to remind him at all times of the supra-individual prerequisites of his actions and thinking, while the statement of the social character of human reason, which can only develop within a

<sup>629</sup> Elements, I = p. 16ff.; cf. Writings, II, 258.

<sup>630</sup> See Miller's letter to Gentz of 17 4. 1817 = Briefwechsel, 241. Cf. Baader's interesting elaborations on the involvement of affect and love in cognition (SW, I, ff39., and V, 251).

<sup>631</sup> S. Statesman's Manual, App. C = Coll. Works, VI, 59ff, £63, 75, in conjunction with Church and State, I u. IV = Coll. Works, X, 12£, 59.

The fact that the social group can develop, operate, and refine itself, must demonstrate the impossibility of thinking outside of the *societas*, that is, of wanting to<sup>632</sup> change the *societas* on the basis of a thinking that has arisen outside of itself. Thus arises

and shapes conservative sociology on the basis of the thesis against the feasibility of law and the sovereignty of reason, that the Man stands "in the middle of the civil life, from all sides in the state intertwined, there"<sup>633</sup>. Therefore, there is no abstract-autonomous reason, because there is no abstract-autonomous human being, no human being, who is beyond any bond.

to the group, no one whose thinking and acting were not determined from the outset by the given social reality. As Moser remarked in 1790 in his commentary on the new French constitution, the participation of the individual in the community could not be conceived on the basis of the mere individuality of man as such; other characteristics, such as citizenship or ownership, would have to be added, which, however, would have no bearing on the social reality.

The first two years of the <sup>634</sup>project were devoted to the development of the human being. De Maistre made himself

for his part, made fun of the "homme", whom he had never met in his life, as he had only French, Italians, Russians, etc., that is. - that is, geographically and historically conditioned people - had<sup>635</sup> known. And Bonald reproached the philosophy of the 18. century for having always considered only individuals and not "personnes liees entre elles par des rapports"; and to these individuals, in turn, it had given the abstract term "Menschenge

bad" as an affective point of reference, precisely in order to destroy<sup>636</sup> their traditional - and constitutive - ties to family, class and nation.

The conviction that abstract revolutionary anthropology aims at this destruction makes clear the concrete socio-political motivation of conservative sociology. While in revolutionary natural law the anthropological abstraction is a theoretical projection of the socio-political demand for (formal) equality and thus for the abolition of noble-traditional rule, the conservative theory of the socially rooted and therefore concrete human being amounts to the defense of the hierarchy of the *societas civilis*. M. a. W.: since the conservatives can imagine the social only in its standing, "organic" structure, their conviction of the sociability and concreteness of man expresses the desire to maintain the *societas civilis*; the anthropological thesis is thus automatically combined with a socio-political purpose, or: the theoretical thesis of the sociability of man forms the flip side of the normative statement that the individual should be committed to the hierarchy of the society.

<sup>632</sup> On the double anchoring of human reason in the socially and metaphysically understood superindividual, see typically Baader, Schriften, 194ff.

<sup>633</sup> A. Miiller, Elements, II = S. 22.

<sup>634</sup> Ober das Recht der Menschheit etc., Werke, IX, ff140, cf. (158 Cf. Lorenzi, Okon. Geschichtsauff., 83£

<sup>635</sup> Considerations, VI = Oeuvres, Sp. 50.

<sup>636</sup> Du Perfectionnement de l'homme (1810) = Oeuvres, VII, (516

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<sup>7</sup>Even more: since the only possible form of society is the *societas civilis*, this conservative sociology avant la lettre must be carried to extremes and it must be assumed that the social rootedness of man is absolute and universal.<sup>63</sup> For the *societas civilis* does not know that separation of state and society which entails the separation of public and private, legality and morality, or public action and personal conscience. Man and citizen cannot be separated<sup>638</sup> from each other in it because it is itself unitary. Its members therefore remain all-round and unitary existences precisely and because of their concrete and all-round social rootedness in a monistic-unitary community.

Because conservative anthropology with regard to the theoretical underpinning The way in which it is designed in response to certain sociopolitical desiderata does not form a logically coherent whole, but rather fluctuates according to the polemical requirements of the respective constellation. The short-cuts that make possible the stealthy transition from the factual to the normative are paired in it with ambiguities that arise in the effort to refute hostile positions that are themselves ambiguous, but define and classify the terms of ambiguity differently. Although the conservatives emphasize the emotional-sensual aspect of man and the world of living experience in general against what they consider to be revolutionary rationalism or intellectualism, they find themselves forced to speak a substantially different language when it comes to exposing Enlightenment empiricism and its obvious materialistic implications as the philosophy of atheism. Then the interconnection of sensation and thought or of body and soul is emphatically denied, with Bonald arriving at<sup>639</sup> an almost spiritualistic definition of man as "une intelligence servie par ses organes". Another reason for the emphatic distinction between the "spiritual" and the "animal" in man lies in the conservative aversion to euda-monism as a theory that supports the sovereign activity of the sacred state in the name of the "human being".

<sup>637</sup> Conservatives often allow themselves such short-cuts (although it must be noted that they are not a specific feature of conservative thought, but characterize normativist ideological attitudes in general; what forms they take in non-conservative thought cannot be discussed here); see, for example, how Baader derives from the thesis of the "social nature of reason" the obligation of individual

The author of the book, "The Intelligence," is convinced that it is the right thing to do, to profess the ruling (and not revolutionary) ideas (Schriften, 89f., cf. 93., ff.). 183

<sup>638</sup> On Burke's views in this regard, see the good analysis by Hilger, Burke, 32; see Bonald, *Legisl. Prim. (Disc. Pre!.)* = *Oeuvres*, I, 233.

<sup>639</sup> *Recherche Philos. sur les premiers objets des connaissances morales*, esp. ch. V, VI, VU, IX = *Oeuvres*, V, 172ff. 183, ff. 195 ff. 230 ff.; cf. the *Discours Preliminaire* of the *Legisl. Prim.* in the volume 1.. The same is argued by de Maistre, *Soirees*, II u. IV = I, 120 ff., ff. 297

general (material) welfare<sup>640</sup>. However, this argumentative line is not consistently maintained, since the conservatives at the same time try to refute the clear-revolutionary idea of perfection by anthropological means. Authors who, against the utilitarian-eudamonic spirit of the time, emphasize that man is not an animal, must in the same breath, against the anthropological optimism of the revolution, point<sup>641</sup> to the permanent dominance of the blind instincts in man, to the weakness of his will and his intellect. The view that man is "mauvais, terrible ment mauvais"<sup>642</sup> was often presented as a mere reformulation of the Christian doctrine of the fall of man, in which Stahl found the<sup>643</sup> ideological "principle of reaction". Cortes, who once again reached rhetorical heights in addressing this question, made it clear that this sinister anthropology turned against the threatening deification of man, which would be obvious if man were endowed with a divine attribute par excellence, namely "la bondad ingenita y abso luta"<sup>644</sup>. In this respect, the conservative position sufficiently solved its polar task, but at the same time it raised new questions: how could the radical historical originality of revolutionary Satanism be explained on the basis of the invariable sinfulness of man since Adam's fall? For centuries the same sinful and wicked people had lived within the framework of the *societas civilis* under the commandments of divine right, i.e. according to the will of the church and the nobility. To the given - and iibrigen also the conservatives adhering - siindhaftigkeit something had to be added, in order to call the specifically revolutionary hubris into being. In other words, if one wanted to take the connection between siindness and revolution seriously, one would have to claim that revolution was just as permanent a condition in history as siindness. And yet, the conservatives let the revolution as a concrete historical process begin at the earliest with the modern age and, on top of that, they longed for the good old pre-revolutionary time, even though this too, according to theological premises, had to be entangled in the siind.

On the thesis of the anthropological and epistemological inferiority of the intellect, the conservative thinkers now tried to build a certain praxeology. They assumed that within society as a whole, theories and theoretical pursuits had the same subordinate importance and function as the purely intellectual element in the life of the individual. Philosophical theory even had a dangerous effect, Bonald thought, in that it sought to force into its abstractions questions that were not related to its

<sup>640</sup> See above section 4a of this chapter.

<sup>641</sup> See e.g. Brandes, *Folgen*, 21ff. in connection with ff. 71

<sup>642</sup> *So de Maistre, Soirees*, II = I, 83.

<sup>643</sup> *Parties*, 68.

<sup>644</sup> *Ensayo*, II, = 10 *Obras*, 611; 11, cf. 535.

The more so as theory has a derived character, i.e. it arises on a social basis, which for its part cannot be created by theory: "la societe n'aurait pas encore commence, s'il eut fallu attendre que Jes philosophes fussent d'accord seulement sur la definition d. u mot de societe"<sup>645</sup>. Jarcke also did not believe that "a theory lying in the field of mere knowledge has the power to reshape the world"; for "the permanent phenomena in history precede the theory. It is not the theories of the intellect that make history, but the desires and inclinations of the heart"<sup>646</sup>. The consequences of this view of the importance of theory in social life for a correctly proceeding theorist had already been suggested by Moser a few decades earlier. He did not deny that "true theory" and practice must coincide, or that "true theory" and practice must not coincide.

It is not difficult to see that this conception of the primacy of practice over theory - just like the related theses of the primacy of the existential over the intellectual or the social - <sup>647</sup>is not a new one. It is not difficult to see that *this* conception of the primacy of practice over theory - just like the related theses of the primacy of the existential over the intellectual or of the social over the individual - amounts to the demand that the existing be regarded as the basis of all possible

In this sense, conservative historicism does not imply relativism or skepticism; on the contrary, it contains a decisive normative aspect. In this sense, conservative historicism does not imply relativism or skepticism; on the contrary, it contains a decisive normative aspect. When A. Miiller expects political science to see its object "in motion" and to "represent things as they are in time," he does so out of the conviction that "the becoming in the past is indicative for the becoming in the present and the future. Therefore, he also relates his view of historical events to the question of the unity of theory and practice: theory is "fertilized by practice, which is nothing other than "the internal state relations as they have become"<sup>648</sup>. In the light of conservative normative historicism, therefore, the inseparability of theory and practice can only mean that any autonomization of theory as revolutionary natural law is inadmissible, indeed ultimately impossible and doomed to failure.

The stereotypical conservative counterpart is similarly conceived and motivated.

<sup>645</sup> Si la philosophie est utile pour le gouvernement de la societe (1810), Oeuvres, Vil, 501(

<sup>646</sup> Verm. writings, I, 47£

<sup>647</sup> Upper Theory and Practice, Works, X, esp. 142£, 148£.

<sup>648</sup> Theory of money, 46f.

This is the distinction between the abstract and the concrete, the epistemological weaknesses of which have already <sup>649</sup>been pointed out. Here, abstract is everything that reason, standing apart from reality, i.e. hostile to the existing, thinks up with the intention of questioning this existing reality by opposing it with its own products of thought and trying to realize them ex nihilo. Burke, who put forward the relevant conservative arguments against such bad abstractions, admitted the necessity of general ideas and principles as ordering constants within the sheer variety of phenomena, but he saw the difference between the "statesman" and the merely theorizing "professor" in the fact that the latter, in every assessment of the suitability of general principles for life, proceeded from the <sup>650</sup>given "circumstances". Circumstances ...give in reality to every political principle its distinguishing color and discriminating effect. The circumstances are what render every civil and political scheme beneficial or obnoxious to mankind "<sup>651</sup>; for in moral and political terms things are true or false only in view of their consequences, the true and the false are thus judged in the social sphere not in themselves but according to their ability to produce<sup>652</sup> good or evil. Here, too, the conservative answer to the revolutionary abstract principles posed as many problems as it did to Joste. While it fulfilled its polemical task more or less satisfactorily, since it forced natural law normativism to an emergency landing, so to speak, it was, on the other hand, hardly in harmony with those principles on which the conservatives based their efforts to formulate their own position. Thus, the distinction between the (theoretically) true and the (practically) good, taken to its logical conclusion, would deprive the appeal to the divine-national order as the ontological foundation of the *societas civilis* of any sense and limit the legitimation of the conservative attitude solely to secular-utilitarian points of view; but the conservatives did not want to go that far, especially since they believed themselves to be in possession of *the* truth, i.e. they considered themselves to be the exclusive connoisseurs of the divine order. They believed themselves to be the exclusive connoisseurs of God's will. Secondly, in the demand for consideration of the real circumstances there was the unspoken but by no means self-evident assumption that these circumstances were homogeneous enough to be subsumed under a single common denominator and interpreted accordingly; the reference to the concrete circumstances was thus abstract in so far as it avoided the only truly concrete question - namely: who is authorized to judge the objective character of these circumstances? - was avoided. It simply goes for

<sup>649</sup> See above Ch. I, Sect. 1.

<sup>650</sup> Speech on the Petition of the Unitarians (1792), Works, VII, 41.

<sup>651</sup> Reflections, Works, III, 240.

<sup>652</sup> Speech on the Petition ... , Works, VII, 55; Appeal ... , Works, IV, 169, £80; cf. already Letter to the Buckinghamshire meeting (1780), Works, VI, 294.

that under all circumstances revolutionary abstractions, i.e. not conservative interpretations of the circumstances, were embodied and that the concept

The term "relations" could only mean <las non-revolutionary or <las counter-revolutionary existing relations. For this reason, it was never satisfactorily explained from what circumstances the revolution itself arose; and for this reason, no consideration was ever given to what, from the conservative point of view, should be done if "the" circumstances should make revolutionary solutions inevitable, or should a posteriori sanction such solutions. For in this case, there was obviously nothing left to do but

The "circumstances" were left aside in order to adhere to conservative principles, as was often the case.

Conservative anthropology reached a polemical climax when, on the basis of the outlined premises, it set out to prove that the revolutionary could be assigned to a specific type of man, visibly different from the normal one. According to it, the revolutionary is essentially characterized by his devotion to theoretical abstractions, which results in a preponderance of the cold intellect and a corresponding withering of the emotions of the heart; the consequences of this mental condition are fanaticism and crime.<sup>653</sup>

- and the spreading of this revolutionary spirit among the people produces, according to the same scheme, "a black and savage atrocity of mind, which supersedes in them the common feelings of nature"<sup>654</sup>. The conservatives, of course, consider this spreading as a pathological and temporary phenomenon, especially since, due to the anthropologically predetermined inferiority of the intellect, abstract philosophizing is able to<sup>655</sup> captivate only a small minority. In describing the revolutionary process, they thus tend to project the opposition of intellect vs. feeling into the social arena by substituting for intellect the revolutionary minority of abstract thinkers, from whom the healthy mass of the people stand out as bearers of tradition and custom, in short, of uncorrupted "feeling. It is therefore mere misrepresentation and pretense when the revolutionary minority speaks in the name of the whole people or defends the people's rights; in reality it has not the least to do with the people and its natural feeling, as is also shown<sup>656</sup> by its rather parasitic social composition (literati, provincial lawyers, etc.). This inner and irreconcilable strangeness between the revolutionary minority and the people explains the double-sided attitude of the former toward the latter: it pretends to want to give all power to the people, and at the same time it treats them with the greatest contempt<sup>657</sup>. This revolutionary misanthropy

<sup>653</sup> Typically Bonald, *Theorie du Pouvoir*, I, =4,4 Oeuvres, III, f.256

<sup>654</sup> Burke, *Reflections*, Works, III, 435.

<sup>655</sup> So brand it, *zeitgeist*, 105.

<sup>656</sup> Burke, *Reflections*, Works, III251, , 286.

<sup>657</sup> A. a. O.,305.

is actually rooted in the high moral standards of revolutionary theory, which is not satisfied with any half-measure or compromise; the overstretched attitude against <las Bose> thus becomes a lack of love for the people<sup>658</sup>. Above all, the ambitious "political men of letters" turn out to be theologians in the worst sense of the word, intolerant intriguers and fanatics, ready to eradicate by alien means everything that stands in their way<sup>659</sup>. Thus, conservatives, on the basis of their observations about the "importance of writers in political terms," <sup>660</sup>conclude that the "tyranny of the intelligentsia" is much harsher than the rule of the aristocracy of birth; "the kingdom of the priests was gentle and ennobled by faith, that of the great minds would be consuming, like the self-love of scholars."<sup>661</sup> One could be divided on this, but it is not this that is of interest here, but only the structural connection between the antithetical conceptual pair "esprit de parti - esprit de corps" <sup>662</sup> and certain anthropological assumptions, which for their part can only be understood in their connection with certain social ideas and options.

In the above-mentioned pair of terms, the psychological and the sociological aspect is addressed simultaneously and equally.

### *c. Philosophy of History*

Whereas the theological and anthropological assumptions described so far were widely spread among the theorizing conservatives and could easily be recognized as a characteristic component of conservative views, conservative speculations on the philosophy of history have remained rather marginal, i.e. they were developed by a few conservatives independently of each other and were not widely received or used. Nevertheless, they belong structurally together and thus are of equal importance.

<sup>658</sup> A. a. O.,458.

<sup>659</sup> Burke is generally regarded as the initiator and at the same time the perfecter of this psychological-sociological critique of intellectuals; it must be emphasized, however, that the basic motifs he uses are anticipated almost *ipsis verbis* as early as 1782 in Mallet du Pan's analysis of the events in Geneva at that time. Here du Pan treats in glittering prose the "„metaphysiciens politiques" and the philosophers who become theologians, the necessary turning of democratic aspirations into tyranny, the contempt for the people of the revolutionary leaders, the peculiar mixture of vengeful fanaticism and humanistic preaching, etc., etc. (*Memoires*, I, 69). (*Memoires*, I, 69 f., 71, 78, 79, 82). A similar analysis of the "politique philosophique" and revolutionary intolerance, as embodied by "une classe d'ecrivains," was undertaken by Mallet du Pan once again in September 1789 (*Memoires*, I, f., f179185,200., 203).

<sup>660</sup> Thus Brandes, who treats this question extensively and representatively, *Folgen*, ff.44

<sup>661</sup> Jarcke, *Verm. writings*, III, 618.

<sup>662</sup> Bonald, *De l'Esprit de Corps et de l'Esprit de Parti*, Oeuvres, VHI, ff.282

In a specific sense, these can be described as conservative philosophies of history. Just like conservative theology or anthropology, they also take the form of ideological extrapolations of positions on socio-political questions and events. The catalyst this time is the desire to interpret the revolution as a historical event and historical reality in such a way that it would not appear, as in one's own self-understanding, as the necessary climax of an ascending course of history and at the same time as the beginning of a new happy era, but rather as an inevitable and divinely willed catastrophe, which would nevertheless have to be followed by the restoration of the one eternal divine-national order; In concrete terms, this amounts to the perspective that the future, just like the past, would belong to the conservatives and not to their enemies in all the peripeties of the present. In order to ensure this from the point of view of the philosophy of history, the linear construction that was supposed to guarantee the victory of progress, i.e. of revolution, is replaced by a triadic scheme in which revolution is placed between two, so to speak, counter-revolutionary states of nature (a past and a future one) and is thus isolated and neutralized from the point of view of the whole of history.

The refutation of the linear historical philosophy of progress was an urgent ideological task, and therefore it was also pursued by conservatives who in themselves had no historical-philosophical ambitions. Thus Bran des pointed out the connection between the spread of the idea of progress and the demand for a democratic attitude: "the progress proved the increasing maturity of mankind to be able to take care of its own affairs more and more without commanding heads"<sup>663</sup>. Brandes, however, considers this progress to be an illusionary conception; to him, history appears as "a constantly recurring, constantly renewing sinking and rising", whereby he denies this movement the regularity of a natural phenomenon and also does not generally accept<sup>664</sup> the law of the necessary transition of peoples from crudeness to bliite and then to refinement and downfall. This rather relativistic view of the course of history could theoretically settle the idea of progress, but not guarantee the final victory of the conservative cause. It was precisely the historical-philosophical proof of this victory that speculatively inclined conservatives wanted to provide, and they accordingly set out to introduce reassuring regularities and periodizations into the historical movement as a whole. The mechanism of thought at work here becomes clear in de Maistre's construction, which recognizes that the revolution as a historical fact or even period can only be philosophically overcome by the assumption of a necessarily following epoch and thus only by the assumption of an orderly course of history.

<sup>663</sup> Zeitgeist, 224 (

<sup>664</sup> A. a. 209/0., 11.

can be. The explicit starting point of the historical-philosophical reflection is here the desire for such an Oberfliigeln. The revolutionary present, de Maistre notes, is characterized by chaotic conditions and by the lack of religion, but such a state is unbearable and inconceivable in the long run; therefore something new *must* come, and this is indicated by the already existing signs, which coincide with the prophecies of the Apocalypse; the revolution itself is one of these signs<sup>665</sup>. On the basis of a triadic mysticism of numbers, de Maistre therefore expects, after the revelation on Sinai and that of the Son of Man, a third revelation - "une troisieme explosion".

de la toute-puissante bonte en faveur du genre humain ... Tout annonce ... je ne sais quelle grande unite vers laquelle nous marchons a grands pas"<sup>666</sup>. The one from God

The guided course of history thus reveals a double impotence of the revolution: in terms of time, the post-revolutionary epoch is already imminent, and in terms of function, the revolution itself clients goals that are virtually opposed to it. The old idea of God's providence in history is now renewed with the concrete intention of proving the impossibility of a conscious and autonomous historical action of the revolution. We will have to come back to this in this section.

Schlegel tried to systematically elaborate a conservative "philosophy or science of history", which would be based on internal principles and therefore be called "metaphysics of history"<sup>667</sup>. He, too, is primarily concerned with the question of what the revolution is, whether it has achieved lasting effects, and what comes after it. If the revolution is classified as Satan's work and if God remains omnipotent, as he always was, then it must be assumed that finally <the good will win the victory and that a "restoration" is to be expected as the next phase of history. The talk of a restoration, however, implies a circular movement as opposed to a rectilinear one, and Schlegel, aware of <lessen, justifies this view of his <l through Christian anthropology. The idea of progress, he thinks, is valid only if man is regarded as a mere animal, since only an animal requires long gradual development in order to approach perfection; if, on the contrary, the original essential likeness of man to God is assumed, no progress is worthwhile or possible; the only goal then remains the restoration of the divine likeness, and only a cycle, not a rectilinear movement, can lead to<sup>668</sup> this goal. In connection with the socio-politically explosive motive of the sovereignty of man and the divinization of the human species

<sup>665</sup> Soirees , XI = II, 190.

<sup>666</sup> A. a. 198(, 0., 201.

<sup>667</sup> Fragments (1827) = Works, XX II, 389.

<sup>668</sup> Phil. d. Gesch., VII = Werke, IX, ff. 152



The question is therefore as follows: can man be made or does man make himself in the course of a progressive development - or has he been made by God and must merely find himself again? Based on his basic theological-anthropological decision and in view of the expected "restoration", Schlegel divides the course of history into three major periods, each of which is characterized by one of the three foundations of human nature. During the first period, the time of the word, man hears the eternal truth in the upper tradition and revelation; during the second, his power reaches its highest development, which can also end in destruction; and during the third, in which love reigns, he sees the light of the purer truth<sup>669</sup>. This third time is imminent, because the revolution was just "the breaking up of the old destruction to the beginning of the new, i.e. the last time"; the "small, childish human revolution" will now be followed by<sup>670</sup> the "great, serious God-revolution". Schlegel indulges in apocalyptic visions of the "new kingdom" and the "thousand-year Sabbath" and tries various numerically mystically inspired subdivisions of world history in order to make<sup>671</sup> this end of theirs appear as inevitable in its symmetry. At the end, therefore, history had to rest again in the beauty of the eternal, from which it had once started. This could not be otherwise, if one wanted to take seriously its total dependence on God's providence. Nevertheless, the moment in which this dependence is remembered remains significant, as well as the fears and expectations that accompany this remembrance.

have lent their intensity.

Shortly after Schlegel, Gorres also opposed the progress in history, which begins with the self-development of a primordial substance and ends<sup>672</sup> with the divinization of man and paradise on earth, with a triadic scheme of the course of history. At the beginning there is the omnipotence of God, the light and the purity; in the middle there is the love of God, the division and the struggle (among men); and at the end there is the justice of God and the return to clarification<sup>673</sup>. The emphasis on the energetic presence of Providence in history<sup>674</sup> is directed, on the one hand, against the divinization of man by the ideologists of progress and, on the other hand, against the fear that evil could definitively determine the course of events.

<sup>669</sup> A. a. O., 159.

<sup>670</sup> Fragments (1826) = Works, XXII, 313, 181.

<sup>671</sup> A. a. O., ff24,32, ff74,117 ff, ff135; ff, ff52161, ff, ff126242325

<sup>672</sup> Ober die Grundlage, Gliederung und Zeitenfolge der Weltgeschichte (1830) = Ges. Very., XV, 249/51, 253f

<sup>673</sup> Within this triad, Gorres sketches a structure of "infinite time" in a sequence of "great cyclical periods", ...in the intersections of which the historical periods of time are then to be found.

epochs" (271).

<sup>674</sup> A. a. O., 248.

Unlike nature, which is lawfully directed by God, man is free and can therefore also choose evil, but the plans of God cannot be thwarted by this; for if the good serves them intentionally, the evil serves them unconsciously and unintentionally<sup>675</sup>. The victory of the good must, of course, be beyond all doubt, if history revelation of the Godhead, respectively if the good is not the only one.

Although the end of history is<sup>67</sup> certain, Gorres does not establish a connection between it and the defeat of the revolution in the near future<sup>6</sup>. But although the end of history is certain, Gorres does not establish a connection between it and a defeat of the revolution in the near future, but explains his ignorance about the exact course of the coming events and the time of the completion of history, which remains a divine secret. 6TT\_ To what extent this historical-philosophical reticence can be traced back to his earlier plans of reform, which, however, need a lot of time and perhaps a whole historical epoch for their realization, we cannot say with certainty. Nevertheless, in this important point Gorres differs not only from de Maistre and Schlegel, but also from Donoso Cortes, who, about two decades later, drew up a triadic scheme of history, which consisted equally of the guileless primitive time, the apostasy from it, and finally the restoration under God's agide, even if it extended only to the Christian era. The free religious life in the framework of the original community is followed here by the gradual removal from religion and the associated rise of political tyranny, the earthly

the omnipotence of the modern state.<sup>678</sup> The revolution forms the low point

At the same time, however, it *must* unintentionally be the messenger of the last things. This follows from Cortes' 'conviction that the struggle between Catholicism and Socialism, which has already begun, means the decisive confrontation of the forces of light with the forces of darkness; it must end with the victory of the former, since the revolution, i.e. the rebellion of man against God, can<sup>67</sup> neither circumvent nor overthrow the laws of creation and the omnipotence of the Creator.<sup>9</sup>

The deeper reason, then, why history cannot develop in the sense of revolution in the long run, but must, as it were, make a U-turn and return to its original origin, is the necessity of its conformity to the divine laws which prevail in the universe and know how to direct even apparent deviations from the established order in their interest. Cortes looks up to this theodicy with hope, and

<sup>675</sup> A. a. O., 258.

<sup>676</sup> A. a. O., 273.

m A. a. O., 290.

<sup>677</sup> Discurso sobre la dictadura, Obras, II, 316/9.

<sup>679</sup> Ensayo (Conclusion), Obras, II, 701f

He remembers that God has already taken the human violation of the law as an occasion to prove His wisdom and to establish His order. to confirm<sup>680</sup>. Through this view, Cortes enters into a series of conservati Theodicy was the last and strongest argument against the revolution and its profane ideology of progress. Already Burke gave theodicy a worldview primacy when he spoke of nature as the concept of the divinely willed order that the physi The world of the human being, the moral world and the political world are equally encompassed<sup>681</sup>. This or d ness is objectively given and contains originally a moral dimension<sup>682</sup>, so that "the immutable Laws of Nature and the principles of EssentialJustice" can be<sup>683</sup> mentioned in one go. Burke therefore saw himself without further ado to assert He was justified in believing that his preferred political system was "in a just correspondence and symmetry with the order of the world,"<sup>684</sup> especially since for him natural order and hierarchy cannot be<sup>685</sup> separated. Against the background of this conception of nature, the conclusion was obvious that the revolution was "a foul, impious, monstrous thing, wholly out of the course of moral nature"<sup>686</sup>. A permanent enforcement of it would have to entail the dissolution of the present structure of the universe, which, however, seemed to be almost impossible; and the very conviction of this ontologically The impossibility of this situation nourished the conservative confidence that at least on the level of historical-philosophical speculation.

De Maistre's confidence in this regard, whose apocalyptic tendencies have just been mentioned, was also based on a theodicy, which, like Burke's, was connected with the assumption that nature would serve God's plan and that the order would not be changed.

nung ware „l' element nature! de l' homme"<sup>687</sup>; therefore the Bose had no real It was only "le schisme de l'etre"<sup>688</sup>. In his later period, de Maistre devoted detailed study to the question of theodicy in order to prove that there was no injustice in the universal order and that the suffering of the virtuous was due either to their participation in the "peche.

original" or is only apparent, since an eternal blessed life is in store for<sup>689</sup> them. Bearing in mind the progress-optimistic conclusions that can be drawn from of such a theodicy could be drawn and which still in the century 18. the

The theological opponents of Leibnizens had worried<sup>690</sup>, de Mai stre already felt forced to oppose the "tout est bien" with the sinfulness and wickedness of man as well as the present disorder in the world<sup>691</sup>; he also does not want to know anything about a universal lawfulness etc., if the faith in the miracle and sornit also in God would<sup>692</sup> suffer from it.

At the same time, however, he must no less defend the faith against the assumption that the disorder and the evil would prove God's impotence or even malice<sup>693</sup>. This was a battle on several fronts at the same time, which became even more hopeless through the involvement in the old casuistry of theodicy. For despite all the twisting and turning, the origin of the

Bosen ratselhaft. However, it was not blamed on<sup>694</sup> God, but on human freedom, but the assumption of the freedom of will could only be the possibility of It could not, however, explain why man, living in the midst of the good divine order, actually and sometimes even doggedly chose evil.

Equally puzzling was the emergence of the revolution on the historical horizon. The only way to avoid this is to be serious about the conviction that the divine natural order is all-encompassing and indestructible<sup>695</sup>. It has noteworthy

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<sup>688</sup> Considerations, IV = Oeuvres, Sp. 38.

<sup>689</sup> Soirees, I = I, 47;42, II = I, ff;74 III = I, £166; IV = I200., 205,209.

<sup>680</sup> Ensayo, II, =7 Obras, II, 592.

<sup>681</sup> Alie evidence in Jensen, Welt- und Staatsbild, ff168, ff, ff.225242

<sup>682</sup> The documents a. a. 0., £207, ff.188

<sup>683</sup> S. Burke's undated letter to a stranger, Corresp., X, 40.

<sup>684</sup> Reflections, Works, III, 275.

<sup>685</sup> The evidence in Jensen, Welt- und Staatsbild, ff.173

<sup>686</sup> Appeal , ...Works, IV, 70£

<sup>687</sup> Considerations, X = Oeuvres, Sp. 75.

<sup>690</sup> Kondylis, *Enlightenment*, 473.

<sup>691</sup> *Considerations*, III = *Oeuvres*, Sp. 33.

<sup>692</sup> *Soirees*, IV = I, 197, 210.

<sup>693</sup> *Soirees*, VIII = II, 96f

<sup>694</sup> See, for example, Schlegel, *Phil. d. Gesch.*, XV = *Werke*, IX, 339; Cortes, *Ensayo*, II, =4 Obras,

II, 570. 567,

<sup>695</sup> As Haller put it: The state of nature has never ceased; it is eternal.

unchangeable order of God himself . . . men would strive in vain ever to step out of it" (*Restauration*, I, 340). According to Haller, the defeat of the Revolution was due to its "illegitimacy of nature," to its opposition to the "omnipotence of nature" (*loc. cit.*, I, 260). According to Haller (*loc. cit.*, I, 273, note 24), he wrote down this sentence as early as 1811, at a time when Napoleon was in power, and he wanted to say that the victory of Napoleonic casarism demonstrated the impossibility or impossibility of popular sovereignty and the necessity of personal-first rule (*loc. cit.*, I, 272). By this remark Haller nevertheless made a very gefiihr lich admission. For in his zeal against popular sovereignty he confused the naturalness of rule in general, which could also have revolutionary origins and character, with the necessity of "natural" rule as he understood it. On the basis of his own premises, however, Haller could by no means consider every rule and every hierarchy natural - and for the conservatives in general it was no consolation that after the dissolution of their own rule their enemies would take on the task of continuing the work of nature: this could no longer be the "true" nature. Precisely because Napoleonic Casarism was no less revolutionary than the popular sovereignty itself with regard to the *societas civilis*, which after all set the standard of nature in the social sphere, Haller spacer celebrated its defeat instead of seeing in it a defeat of nature, as he had probably had to do on the basis of his view of 1811. This example shows the difficulties that accompanied the concrete application of the conservative view of the divine-national order at every 1789 turn. They

There have been some<sup>6</sup> attempts at a sociological interpretation of the phenomenon of astonishment and horror, but in general they have not been followed. The real reason for this was not (always) the lack of analytical skills, but the primacy of the concept of the divine-national order and theodicy in conservative thought, so that no explanation of the revolt could be considered satisfactory if it did not make sense from this concept. Although the theory of conspiracy was a degenerate form of sociological explanation of the revolution, since it emphasized the role of uprooted intelligence, its primary function was not analytical, but in it all possible suspicions or hallucinations of aristocratic circles were condensed already during the first period after 1789, who could not quite believe in the extent of the catastrophe and, since they were not prepared to admit their own guilt or the essential weaknesses of the ancien regime, attributed the unmeasurable and otherwise inexplicable misfortune only to dark machinations.

The same was true for any attempt to recognize the sterility of one-sided restorative efforts, to somehow take into account the post-revolutionary reality, and possibly to seek practical compromise solutions: in purely theoretical terms, this had to be classified as a betrayal of God or of nature. In this respect, Haller was right when he held on to the 1849 patrimonial ideal and thought that the now frequent recognition of the "impossibility of the old order" on the part of the conservatives gave "the revolutionaries a game they had won"; why, he asked, should "what is natural, what has been created by God, what has existed for thousands of years" be impossible? (Letter to E. L. v. Gerlach, November 28, 1849, in his *Nachlaß*, II, 645).

<sup>6</sup> Thus Burke defined Jacobinism as "the revolt of the enterprising talents of a country against its property" and divided these "talents" into "two sorts of men": the philosophers and men of letters who had undermined the religious foundations of the ancien regime, and the politicians who had recognized the need for a relationship with the philosophers in order to

(*Letters on a Regicide Peace*, I and II = Works, V, 309, 363). Somewhat more one-sidedly, Bonald emphasizes the role of the philosophers - that is, as in the case of the socially rootless elements - as the originators of the Ubel; in view of the closest

The connection of *société politique* and *société religieuse*, he thinks, the undermining of the latter would lead to the collapse of the former (*Théorie du Pouvoir*, I, 4, 4 = *Oeuvres*, III, 248ff.). Bonald, of course, does not explain why the members of a *societas*, for whom religion is vital, to obey the enemies of it to a practically dangerous extent, instead of rendering them harmless. Chateaubriand avoids this difficulty by the admission (not obeyed) that only a general moral decline at court and in the country had made possible the spread of irreligious ideas by people who lacked firm social and moral ties (*Essai ... sur les Révolutions*, I,

70 u. II, 63 = *Oeuvres*, XIII, 170f., 262). - Incomparable in its virtuosity remains Mallet's du Pan's consistent sociological explanation of the revolution as a "displacement of power" (*Le caractère de la révolution française et de ses développements successifs*, *Mémoires*, I, 394 ff.), which is worthy of special discussion. On the same level of sociological thinking is his explanation of the first successes of the revolutionary armies (*Betrachtung* gen, Sections 4 and 5). It is easy to understand why such an ideologically hardly usable interpretation could not inspire most conservatives and therefore did not find imitators in their camp.

could<sup>697</sup>. A similar mood, i.e., the feeling of powerlessness and embarrassment, also gave rise to the mysticistic or fatalistic tendency to attribute the rationally inexplicable events to an unfathomable divine plan or to God's intention to punish<sup>698</sup> the community for the sins it had committed. It is not surprising, then, that abbe Barruel, the most prominent proponent of the conspiracy theory, believed that God had intended to inflict<sup>699</sup> a well-deserved punishment on unbelief through the Revolution. It was not explained in detail whether the whole community was punished for the sins of a small sect (in which case the direct punishment of this sect would have been more just and easier than that of a whole nation) or whether the community was completely destroyed and had to be punished as a whole (in the case of a general destruction, however, the conspiracy of a small minority to destroy the nation would not have been necessary). Either way, this theory of punishment established a connection between the burning problem of revolution and the central theological and philosophical problem of history. This connection was maintained by the thesis that the revolution was "evil, mauvaise radicalement" or "satanique"<sup>700</sup>, so that their explanation, like the explanation of the

The paradox lay in the fact that God, in order to punish the sinful, made the most sinful, namely the "atheists," at least temporarily lords of the earth. The paradox lay in the fact that God, in order to punish the sinners, made the sinners, namely the "atheists", at least temporarily masters of this earth; the (long-term) punishment of the sinners is thus carried out by the (short-term) reward of them. This paradox could be reconciled with the concept of theodicy only by assuming that "there is a destiny of mankind and a God who raises it to this eternal destiny through struggle and pain, and even through apparent ruin and apparent death"<sup>701</sup>. The historical-philosophical actualization of the theodicy again required belief in the heterogeneity of the

<sup>697</sup> Baldensperger, *Mouvement*, II, 14 (The continuing reluctance to find deficiencies in the ancien regime, from which the Revolution could have resulted in a somewhat clear manner, ensured that the theory of conspiracy continued to gain support during the Restoration period, see Mellon, *Polit. Uses*, 72ff.

<sup>698</sup> Baldensperger, *Mouvement*, II, ff.65

<sup>699</sup> Abrege, II, Cf.407. Bonald, *Théorie du Pouvoir*, I, =7,7 *Oeuvres*, III, 396 (

<sup>700</sup> Burke, *Appeal*, ...Works, IV, 81; Maistre, *Considerations*, IV u. V = *Oeuvres*, Sp. 39 u. 41.

<sup>701</sup> Thus Gentz in the letter to Brinckmann of 30. 4. 1805 = *Letters*, II, 266; cf. the letter to the same of =25.8.1803 *Letters*, 11, (147: „A general Siindflut, either a physical ...or a bourgeois and political one *must* sooner or later turn the soil upside down, so that out of the rottenness ... etc. etc." cf. also the two letters of Miller to Gentz of July and of =4.11.1806 correspondence, 82

The same thought had already been expressed by Novalis within the framework of a triadic historical scheme: "When the time of the resurrection has come, and precisely those events that seemed to be directed against its revival and threatened to complete its downfall have become the most favorable signs of its regeneration, this can be seen in the fact that the time of the resurrection has not yet come.



purposes, i.e., that the revolution objectively had to accomplish something other than <let what it consciously wanted to bring about, and that its bearers, by pursuing or even realizing their own ends, were in truth instruments of Providence; only because of this belief, iibrigen, could their successes not be interpreted as rewards of the Siinde and the Siindigenous. This concept of heterogony of ends, which was already an old component of Christian philosophy of history, was consciously reused by conservative theorists to justify theodicy and thus the finite victory of their own cause in terms of philosophy of history. De Maistre formulated <the general law that guides <the actions of free beings in the bosom of Providence in the following terms: ils., font reellement ce qu' ils veulent, mais sans pouvoir deranger les plans generaux"; because for Providence "tout est moyen; meme l'obstacle: et les irregularites produites par l' operation des agens libres viennent se ranger clans l' ordre general". Applied to the Revolution, this law seemed to hold out the prospect of consolation: "ce ne sont point les hommes qui menent la revolution, c'est la revolution qui emploie les hommes. On <lit fort bien, quand on <lit qu' elle va toute seule. Cette phrase signifie que jamais la Divinite ne s' etait montree d' une maniere si claire clans aucun evenement humain. Si elle emploie

les instrumens les plus vils, c'est qu'elle punit pour regenerer"<sup>702</sup>. In this way an old topos of Christian philosophy of history found good use within the new critical situation. With regard to the polemical use of identical thought structures with reversed signs, however, it is not superfluous to remember that in the meantime also the Enlightenment philosophy of history had made use of the secularized concept of heterogony of purposes in order to <las just the opposite, namely to prove the<sup>703</sup> inevitable victory of progress.

Thus, what made possible the channeling of all human action, including revolutionary action, in terms of higher purposes was, according to conservative understanding, the active presence of divine providence in historical events. In this crucial respect, and for all the conservative appeal to <las historically-become> against the abstractions of revolutionary reason, it is undoubtedly false to assert that conservatism had <displaced> God through history, just as revolutionary ideology <displaced> God through the deification of the

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The fact that the "Christianity or Europe, works, III, 43" is a historical mixture is not at all doubtful.

<sup>702</sup> Considerations, I = Oeuvres, Sp. 16£ Similar to 13, Bonald, see Theorie du Pouvoir, I, 3,7 = Oeuvres, III, u201., Legislation Primitive, I, note8, i = Oeuvres, I, where 340, also the with the problem of theodicy directly connected sentence finds: „Jes revolutions, qui sont Jes grands scandales de la societe, ramenant au bien, car ii n' y a que le bien de necessaire".

<sup>703</sup> Kondylis, Aufklarung, ff.462

people or mankind<sup>704</sup>. Despite the romantic legend of the ahistorical enlightenment, history as the operation of individual and impersonal forces (geography, economy, culture, etc., etc.) has been the great discovery of enlightenment.

The theological conception of the divine direction of human affairs, both great and small, has been invalidated<sup>705</sup>. The real

The object of the study is the transformation of history, i.e. its elevation to a universe, in <The idea that man as a species was enthroned at the center of the revolution was therefore not <the conservative antithesis to the revolutionary divinization of the people or of humanity, but rather the necessary complement to this revolutionary position, and it was fought for against conservatism. It is true that the conservative opposition to the ahistorical universality of revolutionary ideals of reason caused a turn to the historically grown individuality, whereby the preliminary work of the enlightenment historiography in this respect was mostly used without knowledge of its origin. On the other hand, the conservatives never gave up the idea of a divine-national order, otherwise they would have had to part with the idea of Providence, which was the most effective argument against the revolutionary historical philosophy of progress, as well as the best hope in the struggle against the revolution itself; Their difference from their enemies consisted not in the fact that they did not recognize a universal order, but in the fact that they considered this natural order to exist, while the revolutionaries considered it to be one that was yet to be created (a difference, by the way, that corresponded exactly to that between the present and the future ruler). As a mediation between the concept of historical individuality and that of the universal divine-national order, the construction of German historicism about the nations, which are directly to God, came into being, in which the placement of the historical individuals in a transcendental framework was maintained and could be loosened or tightened at will. To remain with the mere historical individuality would have led to relativistic and skeptical conclusions, but the conservatives were not to be won over for this.

The conservative polemic against the so-called historical school, while acknowledging its counter-revolutionary merits, provides solid evidence for this interpretation. The "complete habit of approaching every concept and every proposition immediately from its historical point of view," as demanded by Savigny, <sup>706</sup>could for a thoroughbred conservative such as Jarcke be nothing other than the

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<sup>704</sup> Thus C. Schmitt in one of his elegant but, as so often, misleading intellectual schematizations, see Polit. Romanticism, ff86. He is followed by Rohden, Maistre, 215ff.

<sup>705</sup> Kondylis, Aufklarung, ff.421

<sup>706</sup> Of the profession, Ober120. Savigny's conservative sources s. Rexius, Studien, 505, 518£; with regard to the unconscious guilt of conservative historicism mentioned above.

For the defense of law, the<sup>707</sup> proof of its historical formation was not sufficient, since this also implied the inevitability of a constant change of the existing law; in addition, there had to be a reference to the inner connection of law and freedom, which, as legal freedom, was supposed to<sup>708</sup> guarantee the absolute rule of a human being over the sphere of his well-acquired rights. Thus, according to the conservative view, historicism in itself could not offer effective ideological protection to real conservative interests. Moreover, it seemed to paralyze any energetic struggle in defense of these same interests. For the natural doctrine of the state, Jarcke thinks, suggests the belief that nothing lies in the power of man, since everything happens according to the laws of natural development; to this belief Jarcke opposes the freedom of human will and action, the reality of which makes<sup>709</sup> necessary precisely the supplementation of the natural doctrine of the state by a doctrine of law and freedom in the sense explained above. And the teachings of the historical school implied yet another dangerous idea: they let <the life of nations appear as something primordial, developing by its own inner forces, and if thereby revolutionary briefs could be declared illegitimate, then, on the other hand, <the earthly and the human was made legitimate. Thus also the historical school, as E. L. v. Gerlach remarked, fell into "pantheism"; for it explained everything with reference to "individuality and history of the people, with disregard of the eternal sources and of the generally human institutions,"<sup>71</sup> created by God and therefore always present".<sup>0</sup>

If, despite this polemic against historicism and the historical school, there have been serious conservative approaches to a conservative science of history, the reason for this lies not in an alleged conservative deification of history, but rather in the efforts of conservative ideologists to purify historical events from the "unessential" for polemical apologetic purposes and to schematize them accordingly. to purify the historical events from the "unessential" for polemical-apologetic purposes and to schematize them accordingly. The result was a picture of history that had to come very close to a static sociology, i.e., a doctrine of God-given and therefore unchangeable institutions (cf. the passage just quoted), with parallel use of anthropological assumptions. If <the main problem of historical method consists in sifting <the material at hand and then ordering it "meaningfully" on the basis of the explicit or implicit distinction between the essential and the unimportant, then the task of militant historical phi-

But Savigny's own reference to Montesquieu must also be emphasized (Vom Beruf, 126). See section of this 8chapter.

<sup>707</sup> Verm. writings, III, 12f

<sup>708</sup> A. a. 0., 169f

<sup>709</sup> A. a. O', III, 23ff.

<sup>710</sup> Records, I, cf. 102, 127.

The philosophy and the writing of the history are just as much to look at <las historical material>.

It is no coincidence that conservative philosophers of history insist, no less than their clarificatory processors<sup>711</sup>, on the need for a "meaningful" examination of the historical details in favor of the broad line of the historical development. It is therefore no coincidence that conservative philosophers of history, no less than their enlightening predecessors,<sup>711</sup> insist on setting aside<sup>712</sup> the storic details in favor of the broad line of historical development, and that historical-sociological typologies are first sketched by thinkers who stand with all their might in the service of a "cause". Bonald is, of course, the most prominent example of this complicated interlocking of motives and performances. He speaks of "science sociale"<sup>713</sup> and wants to construct a theory based on "propositions abstraites et generales".

- These propositions, in contrast to the allegedly unhistorical principles of the "metaphysiques politiques", could be<sup>714</sup> fully applied to the historical reality. The "science des rapports d'ordre entre les fares moraux" could therefore be tackled in the same way as the scientific investigation of the quantitative relations between the physical bodies. For, according to Bonald, there are constants in social life (pouvoir, ministere, sujet) which contain the general formal aspect of all possible relations between social beings, even if they appear<sup>715</sup> in a different form and under a different name depending on nation and time. The historical observation should now grasp the permanence of the relations behind the variability of the respective circumstances and events and thus determine in each concrete case what is essential and what is accidental in the human relations. But when this determination is made with regard to one or the other historical formation, it is presupposed that institutions are immortal, while men are mortal, that therefore not these are made by these, but vice versa these are made by these; <the methodological concern of the conservative historian is (also) thereby connected with his ideological principle that man does not make his history at will, indeed he cannot make it at all. In other words, the philosophical conception of history, which finds its way into static sociology and into the corresponding methodological ideal, is connected with the belief in the impossibility of history, as it exists in certain unchangeable institutions.

<sup>711</sup> Kondylis, Aufklärung, ff.427

<sup>712</sup> See, for example, Schlegel, Phil. d. Gesch., XV = Werke, IX, 336; cf. f.9

<sup>713</sup> The expression is found in the Traite du Ministere Public, V = Oeuvres, 11, 127.

<sup>714</sup> Theorie du Pouvoir, Preface = Oeuvres, III, 20f.

<sup>715</sup> De la Souverainete etc., Discours Prelim. = Oeuvres, I, 9. Bonald considers it possible "de faire l'histoire d'une societe sans nommer aucun des rois qu'ils l'ont gouverne", and applies this method, which he traces back to Bossuet and Montesquieu, to the study of the History of the Konigtum, see De la maniere d'ecrire l'Histoire (1807), Oeuvres, VU, 402, ff.415

and social structures, just as the sacred assumption of historical progress must be based on man's ability to make his own history. From this point of view it was logically consistent that

Bonald Condorcet's concept of progress in the first place <las argument from the

The unfeasibility of history<sup>716</sup>.

This methodologically justified and at the same time ideologically expedient transformation of historical science into static sociology did not mean that conservative theorists, in their efforts to ensure constancy and permanence of their preferred institutions in history, denied historical movement in the sense of the often unpredictable succession of (socially relevant) events. On the contrary. Already in their struggle against the Enlightenment-revolutionary conception of a universal peace, which was to be brought about by the implementation of the likewise universal ideals of reason, they had to point to historical conditions which made impossible that, as it were, immovable condition of the undisturbed happiness of all men which was to be expected at the end of progress. Above all, they saw the phenomenon of war as the practical refutation of these hopes and of the idea of progress in general. In innumerable turns and variations, therefore, they have held that war is an essential part of the life of nature and of nations and cannot be abolished, that it imparts strength and has a purifying effect, that it cultivates the chivalrous virtues and the sense of justice, and so on.<sup>717</sup> On the other hand, however, they advocate a reduction of war precisely in view of its inevitability and reproach the republics and democracies for their warlike nature.

before<sup>7</sup> This double-sided attitude to war corresponds precisely to a double<sup>1,8</sup>

The thesis of the inevitability of war is a way of confirming its social function and position as the traditional warrior class, especially at a time of growing criticism of its "parasitic" character<sup>719</sup>; and the rejection of total war is linked to its desire to retain its monopoly on war, i.e. to avoid<sup>72</sup> compulsory military service and the feared social side effects of massive democratic warfare.

<sup>716</sup> Observations sur un ouvrage posthume de Condorcet, Oeuvres, IV, f.165,171,179

<sup>717</sup> Burke, Letters . . . , I = Works, V, 318; Maistre, Considerations, III = Oeuvres, esp. sp. 31, as well as Soirees, VII = II, 18ff., 25f., 29; Bonald, Theorie du Pouvoir, I, 4,4 = Oeuvr,es III, 236; Haller, Restauration, III, 100ff.; Miller, Elements, IV = pp. 52ff.

<sup>718</sup> Typically Bonald, Legislation Primitive, II, 14 = Oeuvres, II, 22ff; Theorie du Pouvoir, I, = 5,5Oeuvres, III, ff289. Cf. Burke, a. a. 0.

<sup>119</sup> See, e.g., Marwitz, I, 511; Rehberg, Untersuchungen, I, 224ff. and Adel, chap. 111.

<sup>720</sup> Typically Chateaubriand in his speech to the Chambre des Pairs of March 2, 1818 = Oeuvres, XIV, 91; see Schlegel, Koiner Vories. (1804/5), XI = Werke, XIII, 150. On the debate on the question of conscription in Restoration France, see. Oechslin, Mouvement, 180(

the conservative attitude toward power as a historical phano men. It was obvious to transform the historical-philosophical justification of war, undertaken against universalism and pacifism, into an apology for <la law of power, that is, for <la right of the stronger to extend-<sup>721</sup> From a conservative point of view, and as long as the aristocracy has been

power, or at least fully maintained its claim to it, became

<The law of power was interpreted in the sense that God or nature had determined who should be the powerful one. The emergence and implementation of the revolution, however, made it clear that this interpretation could be reversed, i.e. that the one who has power can also determine what nature should determine. The conception of the right of the stronger, underpinned by the philosophy of history, was thus rendered ineffective, even dangerous. The demand for a moral conception of power raised by conservatives against the unblinking idea of power<sup>722</sup>, on the other hand, had considerable ideological advantages Since right was by definition on the conservative side, the (victorious) power of the enemy could no longer invoke nature; as long as power was only in connection with right, it could no longer be used to determine what was to be determined by nature.

If "true" power could be, <las mere having of right could also be power and give power.

## 7. Conservative Capitalism and Cultural Criticism

### a. Politics and economics. Concept of property and

#### Capitalism crisis attack

One of the main conservative accusations against the modern secular state was that it aimed at the welfare of all and legitimized itself through eudamonic doctrines<sup>723</sup>. Therefore, the capitalist economy (called "money economy" or "industrialism"), whose legitimizing ideology was also secular and "materialist" in orientation, i.e., revolving around key words such as "happiness" or "needs" as well as the anthropological construction of homo oeco nomicus, could be seen as related in essence to the modern state, as its necessary concomitant, and rejected with the same arguments.

<sup>721</sup> In particular Haller, Restauration, I, 352, 357, 359; a particularly characteristic formulation is found in Leo, Sendschreiben, 19.

<sup>722</sup> See, e.g., Stahl's remarks on Haller, Rechtsphil., I, Stahl 565.repeated and It should be added, however, that for Haller justice and love were duties imposed by God on the powerful (Restauration, I, 396ff.).

<sup>723</sup> See section 4a of this chapter.

The evidence of a conscious and regular interaction between the state and capitalism was not lacking. Evidence of a deliberate and regular interaction between the state and capitalism was not lacking. Conservatives noted the tendency of governments to demand the directly taxable branches of the economy in their search for money, as well as their desire "that all work in the state be directed toward the capture of money."<sup>724</sup> They also complained that the states had become slaves of "money oligarchs" and "usurers" through the expansion of their bureaucracies and the increase of their expenditures<sup>725</sup>, and feared the "money power, which embraces and permeates all states, and, having a firm footing and root in several at the same time, is thereby essentially independent of state power"<sup>726</sup>. Last but not least, they were disgusted by the "service of God to industry"<sup>727</sup> - "trade exhibitions treated as the highest affair, flattery from the kings to their last servants, decorations and awards for someone seeking his own advantage by any means. The interaction of state and capitalism meant in concreto that both decomposed the *societas civilis* together and in a complementary way. Capitalism could only develop by nesting itself in the divisions that were

<The independence and autonomy of the economy, which is ideologically and practically vital for the modern state: the ideologically and practically vital independence and autonomy of the economic could only flourish on the basis of the separation of (political) state and (apolitical) society, Just as the anthropology of *homo economicus*, which courageously supports capitalist behavior - in its intertwining with the profane demand for happiness and in its (tacit) demarcation from the Christian subsumption of all human endeavors under the goal of salvation - developed only as an ideal consequence of the separation of legality and morality, private and public. Whereas in the ideology of the *societas civilis* the concept of the highest ethical goal ensured the coherence and mutual dependence of all spheres of the social, the aforementioned separations now made it possible for the economic to become independent, so that in the relationship with the modern state it could turn as the purely political against the *societas civilis* as the ethical-political. Thus, when the conservatives defend the unity of economy and politics under the sign of the ethical, they aim at subjecting the independent development of the capitalist economy and the bourgeoisie to the control of instances that were traditionally noble-conservative terrain. Thus, it is not by chance that the conservative critique of capitalism began with the rejection of the view that the state has no ethical task, but is merely responsible for external interests.

<sup>724</sup> Muller, Treatises, 143.

<sup>725</sup> Marwitz, II, ff.2,273,325

<sup>726</sup> Schlegel, Fragmente (1826) = Werke, XXII, 239.

<sup>727</sup> Radowicz, Fragments, I (1842) = Ausg. Sehr, 11,259.

needs<sup>728</sup>. Apart from its anthropological implications, which we will deal with in the next section, this conception demands the independence of the economic in so far as here the state, after its total withdrawal from the realm of the ethical, recognizes as law only the positive law established by itself, which no longer regulates the relations between people as ethical personalities, but the contracts between economic and primarily economically thinking subjects. In contrast, the good state or the *societas civilis* represents the divine law, which is based on the unity of ethics and politics and thus cannot recognize any autonomy, let alone priority of the economic; the positive law conceived according to the needs and ideas of economic subjects remains subject to the higher law in the same sense as the economy is subject to the ethically oriented politics. This again corresponds to the fact that the correct view of state life cannot be the positive-legal or the national-economic one, but should be taken<sup>729</sup> from a partly historical and partly legal (in the sense of the aforementioned higher law) point of view. But since the (higher) law legitimized the functioning of the *societas civilis* and thus the ruling position of the nobility, it is easy to understand what the conservatives mean and want concretely when they claim that the decisive point of view is "not the economic but the legal" or that the salvation of the state is based<sup>730</sup> on moral and not economic principles.

The transfer of the socio-political demand for unity of (ethically oriented) politics and economics to the field of scientific theory has led some conservatives to remarkable methodological insights. A. Müller, in particular, opposed any isolated consideration of the political and the economic and attributed similar approaches to the dissolution of the *societas civilis* and the concomitant autonomization of the social spheres. If politics as a science no longer has the true state as its object, he thought, then national economy can deal with nothing else than the pure yield and the dead goods, with the striving for welfare and wealth.<sup>731</sup> According to Müller, however, this does not contribute to the conceptual pragmatism of the national economy, but to its substantive distortion. For in view of the objectively given interdependence of all spheres of the social, the one-sided approach of the modern national economy does not allow for a clear definition of the social sphere.

<sup>728</sup> Müller, Elements, II = S. 24.

<sup>729</sup> A. a. IV0., u. VI = p. ff.47, ff.80

<sup>730</sup> Marwitz, II, 334; I, II, 2,57.

<sup>731</sup> Of necessity, 178.



In the same way, it is impossible to grasp the essence of the economic product; production is "the great, profoundly intricate and <hole so simple> movement of spirits and hands under which the national empire is in perpetual development. Whoever wants to consider this cannot exclude the powerful inner or soul forces of man" - and this means that one cannot exclude the state as a whole, with which the forces of the naturally social man are connected.

are<sup>732</sup> linked to each other from the very beginning. Nationaloconornical and legal or

constitutional-political consideration belong together, especially considering the fact that "the existing state constitution itself", i.e. the sum of all inter-human relations in a state, "is the real national capitalist".<sup>733</sup>

Behind the economic magnitudes, then, are the social ones in their totality, which determine the scope and the rules of the game for the former. That is why Coleridge reproaches the national economists who assume the autonomy of the economy: "what they truly state, they do not truly understand in its ultimate grounds and causes"; above the "political economy" stands the "political philosophy. This economic-theoretical attitude, of course, has an ideological background and a sociopolitical point. For the thesis that the economic should not be viewed according to purely economic criteria, but from a higher social and legal standpoint, means in concrete terms that the concerns of those who act in the name of the community standing under the sign of traditional law, rather than those of the bearers of the autonomized Okonornian, should be the deciding factor and the direction. The government's intervention to prevent the enrichment of the bourgeoisie at the expense of the other classes is seen as a socio-political concretization of the rejection of the autonomy of the Okonornian and as a realization of its subjugation to higher legal considerations.

understood and demanded t<sup>735</sup>. At such an intervention showed very many

Conservatives were all the more interested in this because, for all their polemics against the autonomy of the economic, they were aware of its growing importance vis-à-vis the political. Under the impression of the tremendous upheavals of the 19th century, a conservative as well as a Marxist could think that "the rule of the economy" was a "political" one.

in the economic and social spheres irresistibly entails the corresponding domination in the political sphere.<sup>736</sup>

The two views described above concerning the relationship between politics and

Two different concepts of property correspond to the concept of economy. While on the basis of the unity of (ethically oriented) politics and economy property is understood as the epitome of firm interpersonal (hierarchical) relations, it appears, where the autonomous economic is opposed to a policy, whose carrier is the secular state, as a mere external and arbitrarily different relationship of a legal subject to a thing. This is at least what the conservative distinction between "living" and „dead" property wants to suggest. In the former, a historically developed relationship between people and things is condensed and continues to live, so that the owner is aware of his responsibility to his ancestors and descendants; no dead things are owned here, but the relationships between people that go hand in hand with the possession of things are in the foreground, as they are concretized, for example, in fiefdoms and service; economic and ethical-social aspects cannot be separated from each other. In contrast to this form of property, which we typically encounter in the form of permanent family ownership, there is the bourgeois form, in which property is simply attached to isolated individuals.

and can be<sup>737</sup> treated, i.e. bought and sold, without ethical or social considerations. The conservative insistence on the interpersonal,

The "living" aspect of property, however, does not stem from a sentimental inclination, but rather from the notion of the unity that landed property and the people under the patriarchal rule of the oikos leader traditionally formed. As Moser noted, the "old real" concept of property also included landlord rights, and the separation of these two aspects, which characterizes the new bourgeois concept of property, "has in fact a greater impact on the state and on a purely good theory of the state.

laws than one believes"<sup>738</sup>. According to the legal conception of the *societas civilis* property in the "old genuine" sense forms a "moral-religious principle", since its human aspects, i.e. the patriarchal interhuman relations connected with it, help to eliminate that egoism by "love", which is inherent to<sup>739</sup> every property as a product of the *Siindenfall*. Following the old ethically oriented concept of politics can thus be asserted: "Property is itself a political concept, an office instituted by God to preserve His law and the kingdom of His law for the state" - which means concretely that property is connected with "patronage, police and jurisdiction", i.e. with rule<sup>740</sup>. In the language of the conservatives, however, this rule is called "duty," which the owner, as God's governor, fulfills with strict and just love toward those who depend on him for their rightly understood good; the requirement that the owner be a "patron" of the state is a "duty" of the state.

<sup>732</sup> Elements, II = p. f26.

<sup>733</sup> Treatises, 34; cf. 65,80, 157.

<sup>734</sup> Talk (17. 1833)3. = S. f198.

<sup>735</sup> See, for example, Baader, Schriften, 11f., ff.17

<sup>736</sup> Wagener, Erlebtes, II, 65. The same insight into the importance of the economic springs, for example, from Radowitz's attempt at a typology of political constitutions based on the respective economic basis (agrarian state = standisch-monarchisch, industrial state = representative, commercial state = democratic), Fragments, I = Ausg. Very. , II, 288f.

<sup>737</sup> Muller, Elements, VIII u. XIV = p. ff100. , ff.165

<sup>738</sup> Patr. fantasies, IV, =43 works, VII, 140.

<sup>739</sup> Jarcke, Verm. writings, ff., 111,181193.

<sup>740</sup> E. L. v. Gerlach, Aufzeichnungen, I, 541.

The demand for the attachment of property to pilgrimage means as much as the demand for the maintenance of patrimonial rights and the rejection of bourgeois impersonal property<sup>741</sup>.

This juxtaposition of "living" and "dead" property in its entanglement with the two fundamentally different views of the meaning and relationship of politics and economics mentioned above is now illustrated by means of the contrast between common and movable property, which, according to the conservative understanding, is not *merely* economic, but political-social, even ideological; The more neuralgic material concerns are at stake, the more passionately the ideological aspect is emphasized. Land ownership and mobile property represent two completely opposed social realities and, moreover, two incompatible attitudes and ways of life. In land ownership, the conservative principle of permanence is embodied; for this property is in the hands of a family that remains constant and continues to live in the change of generations, and which, conscious of continuity and the priorities imposed by tradition, does not let its actions be determined by ephemeral material interests, but by a higher responsibility towards God and man; Thus, property means eo ipso a firm ethical and material rootedness, which is averse to the indiscriminate and opportunistic pursuit of profit. On the contrary, mobile property, which is at the free disposition of the individual owner and can be arbitrarily altered at any time, causes the dissolution of all permanent supra-individual points of reference and orientation, the leveling of traditions, and the subjugation of all ethical points of view to the vulgar material. In the feverish social atmosphere created by the mobility of property and the parallel growing thirst for new rootless property, there is no time and no desire for ethical considerations, for muse and speculation, everything is conditioned<sup>42</sup> by the pursuit of material acquisition<sup>7</sup>. This foundation of the structural contrast between real property and movable property was not worked out in a purely speculative way, but in the context of and on the occasion of fierce socio-political disputes. In Prussia, for example, it was opposed to the influential

The view of the German Smithians around Kraus and Thaer, industry and the land. The economy would obey the same economic laws and therefore a transfer of the laissez-faire principle to the agricultural sector would be possible, even necessary.

<sup>741</sup> A. a. O.: "Communism is right against property without duties. See also Baader, Schriften, £303; Coleridge, Talk (31. 1833), 3.201.

<sup>742</sup> About this juxtaposition of land and movable property in Rehberg's work see the good summary by Vogel, Kritik, 163ff. Typically also Coleridge, A Lay Sermon, Coll. Works, VI, 214 £, as well as Muller, Treatises, 163, 184£, cf. Theory of Money, 50.

Muller, who <sup>743</sup>at that time was the mouthpiece of the reaction against the Smithians and the reformers, defended the peculiarity of agriculture and said that the new national economic principles connected with the developed division of labor and finance could not be applied<sup>744</sup> to it. The

In the field of agriculture, the "money economy" is established not only as a result of the unlimited perishability and mobility of land ownership, whose divisibility is required by its conversion into money, but also as a result of the transformation of all unpaid services and natural dues into money.

money presentation<sup>745</sup>. The involvement of the nobility in the dark business of the money economy had to have disastrous ethical and material consequences for them; Muller therefore described the "great alternative" for agriculture as follows: "either feudalism or debt. It does not escape dependence; only the choice remains between that of the feudal lord and that of the creditor. Either an edle personal obligation of exchange, as the Christian legislations have taught us, or a Roman obligatio, i.e. slavery".<sup>746</sup>

Conservatives, of course, had long recognized<sup>747</sup> the revolutionary implications of the increasing preponderance of "monetary wealth" over "landed property". They saw an essential goal of French revolutionary legislation and the Napoleonic Code as "to demand the circulation of property," from which they concluded that the "unrestrained mobility of all moral relations is only conducive to despotism. The dissolution of stable property, which goes hand in hand with the decomposition of corporations, thus ends with the abolition of intellectual and civil liberty - and this abolition is approved of by the liberal bourgeoisie, of all people, which loudly rejects the interference of the state in the economy, but justifies it without further ado when it aims at the destruction of immobile property in favor of mobile property<sup>749</sup>.<sup>748</sup> The abstract bourgeois concept of property, in which the "hat against any humanization of the right to a thing, against any subordination and connection of two persons" finds expression, is necessarily followed by the communist abstraction of a property<sup>750</sup> belonging to all, i.e. shared down to the last. To this despotism of the fragmented and

<sup>743</sup> Lenz, Agrarlehre, I. Teil, 82 ff., 98 ff.; Steig, Kleists Berliner Kampfe, 55 ff.; Steffens, Hardenberg, 93.

<sup>744</sup> Departures, 42. The emphasis on the difference in essence between country and city, landed property and trade, served concretely and politically, among other things, the attempt to prove "that equality of taxes, applied to these different situations and cases, is not equality, but the highest inequality," according to Marwitz, II, 2, 41.

<sup>745</sup> Muller, Abhandlungen, £116, 139; 122, Marwitz, II, esp. 2., ff. 303

<sup>746</sup> Abhandlungen, 184.

<sup>747</sup> See, for example, Moser, Werke, IX, 380.

<sup>748</sup> Rehberg, Code, 242.

<sup>749</sup> Baader, Schriften, £474, note. 449

<sup>750</sup> L. v. Gerlach, Denkwürdigkeiten, 11, 298.

The conservatives contrast the organic state of organic property with the alienation of property from human beings. If the organic state is to be understood as a unity of ethically oriented politics and economy, and if organic property is to be understood as a crystallization of certain human (patriarchal) relations around certain things, then property must be regarded as state property at least insofar as it may represent a service to the higher principles embodied by the state. State property is, in other words, organic property already because it - as a service - cannot be disposed of according to the will of each random individual, as happens with bourgeois property. On the other hand, this binding of property to personal instances is not state slavery, since we are not dealing here with the modern state, which can actually impose such slavery through its bureaucratic apparatus, but with the *societas civilis*, which, through its ideological homogeneity based on the concept of law, ensures the uniformity of the behavior of its members. Thus, when Moser says that the earth belongs to the state and that its owner may not "dispose of it as he pleases," since he owns only the "need for nothing," he is not thinking of socialism, but of the duty of the leader of the *oikos* to act not as a free subject in the bourgeois sense, but in a way that is appropriate for the continued existence of the *societas civilis*. Because of the state character of property understood in this way, a father, for example, may not destroy the family property by arbitrary wills - just as, conversely, measures of the sovereign for the preservation of the *oikos* or the family property may not be taken.

Schlegel was right in stating that the<sup>751</sup> principle of the "court" was not an illegitimate violation of the *sum cuique*, but an action in the sense of the right supporting the *societas civilis*. Schlegel thus correctly stated that the principle that the state should be granted the sovereignty over external things was an integral part of the *feudal constitution*<sup>752</sup>.

From a conservative point of view, the essential features of capitalism appear as a reversal of the conservative views already presented on the unity of politics and economics and on property. According to this view, the functioning of the capitalist system is based on two realities. On the one hand, the autonomy of the economic is presupposed, which entails a radical transformation of the political, because the latter detaches itself from its ties to ethics and law (in the sense of the *societas civilis*) and makes the sacred state, which is opposed to society, its exclusive bearer; on the other hand, all spheres of economic society are subjected to the same economic laws, so that, finally, the "money economy" replaces the traditional "economy".

<sup>751</sup> Works, IX, f352,353., 356.

<sup>752</sup> Koerner Vorl., X = Werke, XIII, Thinking from the 127. feudal constitution, Millier also thought that the state had "no such direct share" in any kind of landed property (*Theorie des Geldes*, 48f.). Coleridge also spoke of "the idea of trust inherent in landed property" (*Church and State*, Coll. Works, X, f44.).

The result is the elimination of the individual character of land ownership and its general acceptance. Corporatism and patriarchalism are thus replaced by the freedom of the economic individual and, at the same time, by competition between all economic individuals. This freedom and competition is the first thing that conservatives attack, because they believe that it destroys the stable and ethically legitimate hierarchy and transforms social life into an arena where the law of the stronger and more cunning rules. The main victims are the lower social strata, for whose members equality and freedom mean nothing else and nothing more than the loss of all the protection they formerly enjoyed in the protection of their corporations, so that now, as isolated individuals, they are exposed to the pressure of ruthless forces<sup>753</sup>: the bourgeoisie, the "class of industrialists," who "by their nature think only of acquiring and consuming" and concentrate the wealth of the nation in their own hands; To this class the advocates of the *laissez-faire* principle abandon the poor<sup>754</sup>. The autonomy of the economic and the existence of blind economic laws in a society dominated by the bourgeoisie thus produces a "modern feudalism" which oppresses the poor even worse than the old one, by seizing the herdsmen and children, imposing servitude on them and depriving them of their health; even the lot of a Negro slave, it is said, is enviable compared to such a fate<sup>1755</sup>. Since the end of the eighteenth century, conservative authors have been depicting, in countless variations and ever new pitiful twists, the miserable life of the proletarian masses who, suddenly uprooted and deprived of their traditional building virtues, gather in the cities, multiply without measure, and fall into all kinds of vices, while newly invented machines or an accidental change in the tastes of consumers and a reorientation of production can<sup>756</sup> throw them out on the streets at any time.

This capitalist system, however, is not only unjust and inhuman, but is also vulnerable in the very place it considers its strongest: the economic realm. First of all, conservatives believe that capitalism, by displacing agriculture in favor of industry, produces no true wealth, but only poverty and impoverishment, for all its apparent economic activity. Especially in the early stages of the industrial revolution, conservatives show themselves incapable of understanding the qualitative novelty of the emerging

<sup>753</sup> Baader, *Schriften*, 325,328, 330 f.

<sup>754</sup> Rehberg, *Untersuchungen*, f28.; cf. Vogel, *Kritik*, 54ff, ff.190

<sup>1755</sup> See the article "Der moderne Feudalismus," *Berl. Polit. Woch.* 1837 (No. 23), cf.

Goetting, *Idee*, 22.

<sup>756</sup> Such an account is already found in Bonald, *Theorie du Pouvoir*, III, (24), 1 = *Oeuvres*, IV, 405ff Typical are Villeneuve's elaborations and the many passages he collected from earlier authors, see *Economie politique*, I, chap. XII.

The author is not able to grasp the dramatic change in the concept of wealth as a result of the emerging economic development. Thus Bonald cannot quite see why a trading nation like England, for example, which has to import so much from abroad, should be richer than a self-sufficient agricultural nation which keeps its institutions intact and, thanks to its sovereignty, can buy the industrial products it needs if necessary. A self-sufficient nation, he believes, is as rich as any other, especially since true wealth consists in "force morale" as condensed in "moeurs et lois"; On the contrary, "toute la vanité de ces systemes", which rely on commerce and industry, can be seen in the rapid increase of the population to be fed, with a parallel increase in the price of everyday necessities and a reduction in the price of luxury objects, which benefits only a few - from the aggravation of social antagonisms, which ultimately also leads to the impoverishment and weakening of the nation.

Nation contributes, not to mention.<sup>757</sup> A fortiori Bonald can not understand, why those nations should be considered rich in which poverty is growing from day to day; nowhere is it so great, he notes, as in countries "opulents par le commerce," first and foremost contemporary England.<sup>758</sup> What is interesting with regard to the later development of the socialist critique of capitalism is the fact that the conservatives do not explain mass poverty in the rich capitalist countries only in terms of factors such as population growth, but at the same time, even if only rudimentarily, they also explain it as a "socialist" phenomenon.

exploitation theory. Thus Baader reports of the meetings and associations of the factory masters in England, "all of which ended in the fixing of a maximum for the wages of labor and a minimum for the selling prices, thus being nothing better than conspiracies with regard to the proletaires, whose wages they paid, in fact, were consistently far below the natural value and price of their commodities.<sup>759</sup>

(namely their labor)". This rudimentary version of the surplus value theory appears in Villeneuve in the even simpler version that employers would use part of the justly paid wages for the increase of the

<sup>757</sup> Pensees, Oeuvres, VI, 182-186; De la richesse des Nations (1810) = Oeuvres, VII, 584ff., esp. 588. Cf. Coleridge's defense of the principle of economic autarky, Talk, 282f., 288f. (3. 5. and 20. 6. 1834). By condemning "luxury" in the context of their critique of capitalism, the conservatives revive socially critical motifs of earlier centuries (see above, ch. II, sect. 4f.) and mix up old complaints about the pernicious effects of luxury for the aristocracy (cf. Bonald, Pensees, Oeuvres, VI, 53, 11) with current reflections on the parasitic character of capitalist economy, which is dependent on the constant production of künstliche needs (see next section). In a long chapter of his main work devoted to the question of luxury, Villeneuve points to the Contradiction in the attitude of the bourgeois apologists, who denounce the noble luxury, while at the same time they praise the general increase and refinement of the The government's policy is to promote the development of trade and industry (Econ. Pol., I, chap. XVIII, esp. 466).

<sup>758</sup> De la richesse, ... Oeuvres, VII, 595.

own profit. From this he deduces capitalism's unavoidable susceptibility to crisis, developing a theory of crisis that also anticipates later socialist diagnoses. The basic economic contradiction of capitalism, he argues, is that it must keep wages low in order to produce cheap products and achieve higher profits, while on the other hand it *must* stimulate the material needs of the broad masses so that the cheap goods produced can be sold at all. Nevertheless, "il est impossible de concilier des principes aussi contradictoires"<sup>760</sup>.

The constant cyclical "extraction" and "contraction" of capitalist production thus caused aggravates the material misery of the workers en masse<sup>761</sup>. The crises which the capitalist system produces out of its own nature, however, not only of an economic nature; if capitalism asserts the autonomy of the economy and approves of the separation of economy and politics, it cannot, on the other hand, avoid the *political* consequences of economic development any more than it can dispense with the assistance of the new politics and the modern secular state. The external political concomitant of capitalism is an expansion and intensification of wars. Bonald ridicules the liberal theory of trade as a "lien universel des peuples" and remarks that it is precisely trade disputes that are the cause of the "wars".

caused the<sup>762</sup>hardest and bloodiest wars. Domestically, again, the

The capitalist system is constantly exposed to the danger of revolution, since it has to create and keep alive the revolutionary army of the proletariat itself. If the feudal system peopled the country with firmly rooted and naturally living families, "the fiscal, commercial and philosophical regime" would not be able to prevent the revolution.

Cities with restless and rootless people: "l'un, en un mot, donne des citoyens à l'Etat, l'autre élève des prolétaires pour les révolutions"<sup>763</sup>. Already Mallet du Pan reflects on the consequences of a union of these "legions of helpless people, day laborers and manual laborers" with an avant-garde of intellectuals who advocate a revolutionary theory: "Think of it now, that the wordbook and the customs of the Cordeliers Club have become the catechism of this immense crowd of helots" and that the same has been turned into the "catechism" by demagogues. struggle in<sup>764</sup> the name of equality. Even late conservatives generally consider such a bias to be very probable, since they are convinced that "revolution has power only where almost all organism is dissolved, i.e., among highly-militant, hungry literati and among atomized factory workers." <sup>765</sup> Thus, what makes the workers riotous and draws them into the arms of the avant-garde?

<sup>759</sup> Writings, 329.



<sup>700</sup> .Economic Politiqu,eI, 283£

<sup>761</sup> Coleridge, A Lay Sermon, Coll. Works, VI, 157ff, ff202

<sup>76</sup> De la richesse.... , Oeuvres, VII, 591; cf. Pensees, Oeuvres, VI, 10.

<sup>763</sup> Bonald, Traite du Ministere Public, XIII = Oeuvres, II, 189.

<sup>764</sup> Reflections, 47-49.

<sup>765</sup> L. v. Gerlach, Denkwiirdigkeiten, I, 639.

The main factor driving the intellectuals is the atomization of the community, as a result of which the war of all against all prevails and naked selfishness determines<sup>766</sup> all human behavior. To this must be added the despair of the proletarian, who is formally independent and equal, but in fact at the mercy of the stronger and without any legal claim to protection and help - a situation which he finds<sup>767</sup> with "increased acuity" precisely because of his formal equation with the rich. With such a diagnosis, there is no lack of voices predicting an extreme concentration of wealth, a relaxed sharpening of the contrast between the haves and the have-nots, and, finally, a series of cata strophes; this future perspective, however, is <This perspective of the future is, however, less distorted by the expectation that the revolution will not bring about the victory of the proletariat and socialism, but rather the downfall of the entire system of monetary economy and a return to natural economic and feudal conditions,<sup>768</sup> as happened during the Roman Empire.

### *b. The anthropological and cultural aspect*

Rudimentary and stereotypical as they are, the basic motives of conservative cultural criticism can be briefly summarized, although it must be said at once that their socio-political and intellectual-historical significance and effect have been much more important than this prima vista suggests. It must be said at once that its socio-political and intellectual significance and impact has been much more important than the kirrde of this summary prima vista would suggest. The conservative critique of culture, of course, is not a Rousseauian-tinged rejection of culture as such; its target is the culture of capitalism - or rather the consequences of capitalism for the culture of the *societas civilis* - and therefore it begins precisely at the point where the characteristics of the capitalist system become apparent in their danger to the conservative moral code and the people associated with it. A first such characteristic of capitalism is the autonomization of the economy from ethics and politics - an autonomization that finds its tangible everyday expression in the omnipresence and omnipotence of money, which is detached from all ethical restraints and, in its moral neutrality, brings about immorality. In the world of the autonomous, but not detached, but all-pervading capitalist economy, <las money is transformed from a "servant" into a "master;" it becomes itself a commodity and, beyond that, "the only Spinozistic world substance, thus also the invisible world god."<sup>769</sup> The qualitative change of all spheres of social life <through the impact of the "money economy" appears

<sup>766</sup> Radowitz, *Gespraeche*, XIV = *Ausg. Sehr.*, I, Radowitz, 389.<sup>767</sup> *Fragmente*, I = *Ausg. Sehr.* II, 361f *Staatslexikon*<sup>768</sup>, V, f68 (Art. Capital).

<sup>769</sup> Baader, *Sehriften*, 412

so powerful that conservatives sometimes divide the course of history into two periods, i.e. a happy one before and a dark one after the implementation of this money economy. Money! Horrible invention! You are the true obel in the world!" exclaims Moser, thinking with nostalgia of the time of the natural economy, when customs and interpersonal relations were simpler and more transparent; the change that occurred in customs was, of course, condemned by the fatal shift of power in favor of the bourgeoisie and to the disadvantage of the nobility: "Before you came, the landowner alone was a member of the nation ... One did not know moneyed people, those betrayers of human freedom ... Before you came, prudence and strength, these true ancestors of animals and men, decided <las fate of the people. The merchants did not rule over the bravest with their money"<sup>770</sup>. Radowitz, too, sees "the great social transformation of modern times" in the fact that, after the collapse of everything that could not be bought by mere money (birth status, tribe, cooperative, land), "individual wealth alone reigns and is represented by far the greatest extent by money"; with all the differences between a Fugger and a Rothschild, this development had already begun in the 16th century.<sup>771</sup>

The great turn of time thus made <las money, <las "until then a necessary obel", "a god to which everyone pays homage". By undermining the economic and social position of the nobility, it paved the way for the levelling tendency and mobilized society by encouraging <las competitive spirit and awakening in each individual the hope of becoming richer than his father or his neighbor; the amoralist and utilitarian view gained the upper hand and, at the same time, the traditional between human ties softened with the result of a growing isolation of the individuals from each other. These phenomena in the psychological and moral spheres, however, are connected with a certain effect of money in the sphere of labor and production. Through money, labor and acquisition are separated from each other, wealth is completely detached from its productive basis, money and labor no longer correspond to each other, since the speculator can acquire without having to work for it<sup>772</sup>. Parasitism and amoralism thus go hand in hand in the "money economy". Under the rule of money, however, interpersonal relationships suffer not only visibly and directly, but also, and perhaps even more so, indirectly, since they are conditioned practically solely by this impersonal medium, which alone is now capable of creating bonds and dependencies: "The entire

<sup>770</sup> Patriot. Phant. I, =28 Works, IV, ff.144

<sup>771</sup> *Fragmente*, I = ed. very. , 11, f286

<sup>772</sup> The analysis of this paragraph refers to Marwitz, II, f.2,275; II, ff.2,303 317;313, I, f594

The natural dependence of human beings on one another is therefore not authorectical, since the natural dependence of human beings on one another is not authorectical, since the natural dependence of human beings on one another is not authorectical, since the natural dependence of human beings on one another is not authorectical. For this reason, of course, the natural dependence of men on one another is not eliminated.

and thus what our century calls freedom consists only in a doubling  
The loosening of the chains"<sup>773</sup>. Obviously, Miiller is not lamenting the loss of human warmth or love per se and in general, but of that patriarchal relationship which, in his eyes, represented true Christian love. Nevertheless

These statements could also be translated into a more modern language, as was done later. Equally forward-looking has been the attempt to de-fetishize the apparently quite impersonal and super-personal power of money by pointing out that behind it there were in reality concrete human forces and social relations which in their totality constituted the national power of production; production and exchange as they took place among certain people thus gave rise to what from outside and against the background of a quite specific economic form acted as the very own power of money. Against the bourgeois national economy, which, as a theory of the capitalist system, had the

The economic assumes its own laws and the human-social sub

Miiller, who does not want to accept the stanza of economic magnitudes, advocates the creation of a money that would be nothing other than the faithful reflection of "our acquisitiveness and its success," "in a certain sense, an eternal money. He also thinks that the autonomous game of money, which has become a commodity and then a master, cannot continue ad infinitum within the capitalist system.

The increase in monetary resources and symbols has a catastrophic effect on the entire monetary system.<sup>774</sup>

The capitalist system, therefore, is as much in contradiction with the true nature of money as the degenerate money is in contradiction with human nature. In this system, however, human nature is also threatened in other, even more direct ways. The conservative critics of capitalism are not afraid to use strong words when they denounce, in a tone of strong moral indignation, the physical and psychological degradation of the slaves of the industrial system: Industry devours victims far more than war, but war does not torture its victims beforehand by nameless agonies, by mental and physical degradation...".<sup>775</sup> The factories, Bonald writes, "alterent Jes formes du corps et depravent Jes ames. La famille y gagne de l' argent, des infirmes

<sup>m</sup> Miiller, *Treatises*, 114.

<sup>774</sup> Elements, XVIII-XXI = S. 218251It 22345.is worth recalling here the221, conservative voices that104 were already in evidence at the time of the French National Constitution. Strong reservations about papier- monnaie etc. reported, see e.g. Aulard, *Orateurs*, 247ff.

<sup>775</sup> *Kreuzzeitung*, 1851, no. citing238, Herberger, position, 26.

et des vices; et l'Etat une population qui vit dans Jes cabarets et meurt dans Jes hopitaux<sup>776</sup>.The psychological consequences of the uprooting of the peasants from their accustomed, morally largely healthy milieu and their transfer to the cities, where they vagabond without fixed family ties and

addicted to drink or crime

. Under these circumstances hort

The industrial worker ceases to be a person, especially since he is not even free to dispose of his own body: Even the serf of the Middle Ages was in a better position; the one who owned his body also had the duty and the interest to take care of it. But now, in the case of the proletarian, the master takes for himself the essential of the body, the strength, and in bitter irony leaves the rest to his disposal.<sup>778</sup>

These are not deficiencies of the industrial system that could be remedied by good will and better technical regulations. The destruction of human personhood actually lies in the functioning of the system itself, namely in the division of labor, the progress of which has made modern industry possible in the first place. It is not by chance that "the ideal of industrial systems" consists in the idea that the individual worker is "nothing but a wheel".

or comb, or single tooth of a wheel in the big mech anismmm".

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In view of its fundamental importance for the development of industry and the formation of the new society in general, the (continued) division of labor is a very frequent target of conservative polemics; and since it could not be rejected on the basis of technical criteria, the critics put forward general anthropological and ethical arguments. Moser, for example, said that anyone who possessed individual abilities to a high degree did not have a completely healthy soul; a number of natural abilities were lamed in<sup>780</sup> him. Rehberg also expressed similar thoughts at an early stage, which became conservative stereotypes only a few decades later. He found that through the "too far carried out" division of labor, people "lose even more in the inner formation of their noblest part than they gain in skill for other purposes. He who develops a single ability at the expense of all his other natural abilities is no good outside his own narrow circle, he no longer sees the conditions of life and thus becomes detached from his fellow men; thus the division of labor paves the way for despotism, to which isolated individuals are most easily subjected.<sup>781</sup> An interesting parallel between the mechanistic character of the modern sacular state, based on the principle of blanket legality and general legislation, and the mechanization of labor is that the division of labor paves the way for despotism, which most easily subjugates isolated individuals.

<sup>776</sup> Pensees, *Oeuvres*, VI, 59.

<sup>m</sup> See, e.g., Muller, *Treatises*, 95£.

<sup>778</sup> Radowitz, *Fragments*, I (1826) = ed. Very., II, 160.

<sup>779</sup> Muller, *Theory of Money*, 119.

<sup>780</sup> Patriot. Phant., III, =34 Works, VI, 124.

<sup>781</sup> *Investigations*, I, 216£

<A. Miiller also draws from their increasing specialization<sup>782</sup>. These leitmotifs are repeated and varied until late in the 19th century, whereby the polemics against the advanced division of labor in large-scale industry often serve to defend the interests of the threatened crafts. Thus we read in Wagener's *Staatslexikon*", that the modern division of labor not only "impairs any valuable development of human powers and abilities, so that labor

The quality of the manufactured products is also affected<sup>783</sup>.

The dehumanization and degradation to which the slaves of capitalist industrialism fall victim, the conservatives hold Christian-humanisti

The principle of the "person" is opposed to this: Persons are not Things ...Men ought to be weighed, not counted. Their worth ought to be the final estimate of their value.<sup>784</sup> In such

Of course, there is no desire to tackle the emancipation of the individual in the sense of bourgeois individualism. Like the sharp pronouncements against mechanized labor, the Christian humanist affirmations serve rather as an incentive to remember the good old days of patriarchal relationships in the countryside. This was not an inconsistency either. For, according to the conservative understanding, personhood and individuality found their true destiny and fulfillment only within the framework of those relationships. Because of this syllogism, very often the condemnation of the horrors of unearthly life under capitalism is directly contrasted with the description of the blessings of patriarchalism, not only for material well-being, but also for human dignity. Thus Moser wrote that, while the free man is rootless and unshod, serfdom has its security and, moreover, its honor, and the relationship based on it is voluntary on both sides.

accepted.<sup>785</sup> Antithetical phrases such as the following are typical:

Destroy the police authority and the judicial authority of the lords of the manor.

and substitutes for it the far more oppressive and far less guarded power of the master over a beggarly and defenceless servant.<sup>786</sup> Haller expressed himself similarly in his last writing. Tithes and ground rents as well as the whole

Feudalism, he complained, was rejected by the spirit of the times, but against "the yoke of slavery under hard-hearted factory masters, who put their journeymen to excessive work," he said.

If you are able to cripple them and put them to the beggar's bar<sup>787</sup> at any moment, you have nothing to object to.

All in all, the capitalist system is in opposition to human nature, and this opposition is also perceived by the people concerned as a contradiction.

<sup>782</sup> Elements, XVI = \$. 193.

<sup>783</sup> II, (485) Art. Labor, Workers, Working Hours).

<sup>784</sup> Coleridge, A Lay Sermon, Coll. Works, VI, 206, 211.

<sup>785</sup> Der arme Freie (1791) = Werke, IX, ff. 162<sup>786</sup>

L. v. Gerlach, Denkwürdigkeiten, I, citation. 107.<sup>787</sup> Lenz, Agrarlehre, 79.

such a thing. For the dullness and wear and tear, for all its ghastly extent, is not able to completely exterminate human needs, so that a permanent tension must result from this ambivalent condition. The capitalist system is equally opposed to the nature of the state (in the old sense of the term), which lives from the harmonious development of all its components, and which therefore has to submit to the point of view of private self-interest, the

the industrial division of labor client, cannot<sup>788</sup> submit. What the conserva

The idea of opposing this upside-down world with the *vita speculativa* may seem very modern today, but it is still only a part of the ancient Christian ideological tradition. Against the ideal of the *vita activa*, as the *homo faber* or the *homo oeconomicus* soil, they assert that of the *vita speculativa* in its Christian version and at the same time offer the likewise Aristotelian-scholastic theory of the ethical purpose of the state against liberal eudamonism and economism.

Bread alone<sup>789</sup>, and the reminder of the "higher essentiality of the human

Nature" oppose the attempt of liberal national iconologists to see man as being absorbed in work, and thus to declare the social order, in which work and the division of labor set the tone, as the natural order<sup>790</sup>. In contrast, the biblical doctrine of work as a curse is resorted to. Man is a thing that serves or works, writes Miiller, because he does this out of necessity; but if he performs the work of necessity with love and the fear of God, i.e., in knowledge of his limitations and mindful of his higher purpose, which surpasses this work, then he again gains his freedom and can find a purpose in work itself. If, however, he makes "mere profit" his end, then "he passes from the realm of freedom and personhood into the realm of slavery and things. The relationship of man to things is shaped accordingly. He who thinks only of profit treats them ruthlessly; he who, on the other hand, acts according to the principles of

Christian economy", he wants to integrate them "into the circle of his life and his personality", "he enlivens them, he personifies them", he treats them with love, because he always thinks first of God, the Creator of all.

The first thing we think of is the preservation of things and all order, then the preservation of our fellow human beings, and only at the end the yield: "this is the true earthly house order"<sup>791</sup>. It is

It is obvious that here the Christian argumentation merely sublimates the priorities of the self-sufficient natural economy. This is also evident in other conservative national economists. Thus Villeneuve confronts the bourgeois deification of work, which only takes into account the sensual man and his material needs, with the

<sup>788</sup> Muller, Treatises, 43.

<sup>789</sup> E. g. a. a. 0., 35.

<sup>790</sup> Muller, Of Necessity, 187.

<sup>791</sup> A. a. 0., f192, 188.



In the case of many other authors, the condemnation of the capitalist economy takes the form of a rejection of contemporary materialism<sup>792</sup> and eudomism and a call for spiritual life under the sign of Christian contemplation, etc. In the case of many other authors, the condemnation of the capitalist economy takes the form of a rejection of contemporary materialism and eudomism and a call for spiritual life under the sign of Christian contemplation<sup>793</sup>, etc. In the case of many other authors, the condemnation of the capitalist economy takes the form of a rejection of contemporary materialism and eudomism, as well as a call to spiritual life under the sign of Christian contemplation, etc. The condemnation of the<sup>794</sup> capitalist economy is also a rejection of the materialism and eudomism of the present.

The socio-political side effects of the capitalist economic system also have regrettable consequences for human nature. The autonomy of the economic or even its supremacy among the activities of society, which leads to the absolute subjection of man to the harsh laws of competition and division of labor, is related to a whole series of separations, at the top of which is the separation of state and society. Because of the modern state's detachment from ethically oriented politics in the old sense, morality and legality, the private and the public now fall apart, so that the polity loses its unified character and appears as a mechanical sum of heterogeneous spaces, hardly organized among themselves: All the vital organs of social association - state and school, church, marriage and guild - are now isolated and torn apart.

- or only interlocking and inhibiting and working against each other" <sup>795</sup>. Man must now divide himself into as many parts as the community and - since this division corresponds to the functional mode of the modern community - give up the hope of uniting the membra disiecta of his personhood into a harmonious whole. Thus, "the citizen must be separated from the human being when speaking of political relations," but without the human being, „the whole "becoming of the citizen" must remain<sup>796</sup> something merely conceived and artificial. The conception that the state exists merely for the purpose of meeting external needs necessarily leads to the division of the human being, which is in itself uniform, into an inner and an outer man, the former acting "spiritually wise," the latter, on the other hand, "mechanically. This

The destruction of the burgeoning being into external and internal actions, into compulsive and conscientious behavior," finally leads to the renunciation of "the

The alienation of human nature reaches its highest limit under the combined pressure of economic and socio-political factors that support the liberal-capitalist system<sup>797</sup>. Thus, under the combined pressure of the economic and socio-political factors that sustain the liberal-capitalist system, the alienation of human nature reaches its utmost limit. But while the socialists derived from this very diagnosis the prognosis or the demand of a new cliem al of the last revolution, the conservatives expected from the deepening of the cultural and ethical crisis a revival of the wen e and the ideo logems that had truncated the traditional rule of the aristocracy. They could not, however, explain in what way this revival could rebuild the now destroyed real fundamental issues of the *societas civilis*.

## 8. The Conservatism, its Intellectuals and the Ideas of the Enlightenment

The opposition between conservatism and Enlightenment has often been seen as constitutive of the emergence of the former. Although this is not the case<sup>798</sup>, the opposition to Enlightenment undoubtedly plays an important role in conservative thought after 1789. We have already discussed the individual themes that fed the opposition when we spoke of the positions that the conservatives opposed to bourgeois liberal deism, individualism, anthropocentrism, rationalism, optimism about progress, and so on. This is not to be discussed again here - it is, by the way, the side of the general problem of conservatism that has been most attentively studied so far, although its significance - in ignorance of the central problem of sovereignty and the related defense of the legal conception of the *societas civilis* since the 16th century - has been underestimated.

- has been overestimated. Rather, in this section, we want to bring into awareness another aspect that has been <liminalized by widespread millunderstandings about <The essence of enlightenment has been obscured. In a scholarly explanation of the contrast or relationship between conservatism and enlightenment, it is important not to assume a concept of enlightenment that the conservatives themselves have developed in their polemics against enlightenment. It is anything but unusual that in polemics <las image of the enemy is made up according to the needs of this very polemic. Above all, the image of the enemy must not contain those elements that are taken over from the enemy's world of thought.

<sup>792</sup> Economic polique, 1 156; 251, capitalism is accused of "l'exicacion perpetuelle des besoins physiques" (I, 24).

<sup>793</sup> A. a. 1, 0., chap. 1-11.

<sup>794</sup> See, e.g., Brandes, *Zeitgeist*, 129 ff; Radowicz, *Gesprache*, VI = *Ausg. Very.*, I, 152; Coleridge, *A Lay Sermon*, *Coll. Works*, VI, 173, 189.

<sup>795</sup> Fr. Schlegel, *Fragmente* (1820) = *Werke*, XXII, 20.

<sup>796</sup> Rehberg, *Investigations*, I, (49)

<sup>797</sup> Muller, *Elements*, II = pp. 24.

<sup>798</sup> S. Chap. I, Sect. and I, all of Chap. II.

were then used against him. If we take the conservative statements against the Enlightenment at their face value, that is, accept the conservative understanding of the Enlightenment, then there seem to be no points of contact between the two enemies. However, the matter appears in a different light when we scrutinize the intellectual-historical origin and relevance of certain conservative topoi. This complicated dialectic of enmity and kinship, of enmity in kinship and kinship in enmity, only becomes comprehensible, of course, if we regard ideas not as ideal entities permanently bound to stable bearers, but as negotiable weapons that can be<sup>799</sup> used differently in each situation by each party, quite independently of the intentions of their originator. Perhaps it is not necessary to explain that all this is not intended to suggest that all aspects of the conservative thought complex were modified or inverted versions of Enlightenment ideas. Nothing less than *that*. It is a matter of very specific aspects, which, by the way, are not always neuralgic; nevertheless, they must be given due consideration in an overall account of conservatism.

The greatest conservative legend about the Enlightenment, and at the same time one of the main conservative accusations against it, says that the Enlightenment in toto was intellectual and sacrificed on the altar of abstract reason the living human existence bound to space, time and history. This is a fundamental error, which, however, has very much shaped *that* understanding of the Enlightenment in the nineteenth and twentieth centuries, each in a different way and from different grounds. In the intellectual spectrum of the Enlightenment there is also an intellectualistic tendency, but it is by no means decisive. The mainstream of the Enlightenment turned against what it considered theological-scholastic and Cartesian intellectualism, developing a comprehensive anti-intellectualist position, grounded not only in epistemology, but also in anthropology and the philosophy of history. At the same time, however, the Enlightenment represented certain norms which were presented as universal and permanent, and as such they came into logical contradiction with the relativistic consequences of Enlightenment anti-intellectualism; thus an incurable conflict of the causal and the normative arose in the wake of the Enlightenment<sup>800</sup>. What the conservatives originally and primarily resent about the Enlightenment are not its philosophical aspects in the technical sense of the word, but the mentioned norms, since these represented the exact opposite of the scale of values that legitimized the domination of the *societas civilis*.

The Enlightenment, for its part, had the intention to put the concept of reason in the foreground - not because of intellectualistic sympathies, but in order to create an effective counter-attack against the divine-ecclesiastical authority. Henceforth, enlightenment rationalism, which was actually meant as a commitment to certain norms, is equated with intellectualism, which in itself does not indicate a (normative) content, but merely a cognitive capacity, by a short-circuiting. This means: the equation of rationalism loaded with content-normative and intellectualism oriented to formal epistemology takes place in the conservative struggle against the concrete content of clearer normativism, whose alleged errors are then attributed to the wrong form and method of clearer thinking in general and as such. Thus the view could arise that abstract principles were derived from an abstract form of thought like the specifically Enlightenment one - and thus also Enlightenment in toto could be condemned and a conservative theory of it in general could be constructed. Reality, however, was much more complicated than this theory, especially since within the Enlightenment the abstractness (i.e., universality and permanence) of the normative was often in contradiction with the specific Enlightenment anti-intellectualism. That is why the conservatives, taking the former under fire, also had to approach the latter, although they did so unconsciously, and not because they had logically invaded and propagated and exploited the internally divided character of the Enlightenment.

The conservative ideologues, by taking advantage of the  
In taking over the anti-intellectualist habitus, which has even become fashionable in the meantime, they defend empiricism against revolutionary reason in a way analogous to the way in which the Enlighteners advocated the primacy of the sensually given over the constructions of scholastic syllogistic or Cartesian deduction. And as with the Enlighteners, so with the conservatives this is done on epistemological and anthropological as well as on social and historical levels. theoretical level. How the conservative argumentation on both levels *is* We have already explained<sup>801</sup> this. Apart from the (unconscious) structural analogy, however, there are also examples of direct conservative reference to thoughts or thinkers of the Enlightenment, and this in an anti-intellectualist context. At a time when the connection between enlightenment and revolution was still unknown, Moser approvingly cited Helvetius' view that sensation can only be understood *through re-sensation* and not, say, *through concepts*. be<sup>802</sup> fallen. But even as the said connection already constructed *is* Angst Bonald, without praising his predecessors or even mentioning them, made a point of

<sup>799</sup> On this point, Kondylis, *Power and Decision*, ch. III.

<sup>800</sup> For more details see Kondylis, *Aufklärung*, esp. ch. V- VI.

<sup>801</sup> See sections b6 and c6 above.

<sup>802</sup> *Patr. phant.*, IV, =5 Works, VII, 28.

Condillac's and his school's sensualist-based linguistic insights in order to give an epistemological foundation to his own linguistic theory; the contrast between these premises and his spiritualist intentions entangled him in many a logical difficulty<sup>803</sup>. Precisely because the conservatives adopted the intellectual achievements of Enlightenment only by simultaneously rejecting its norms and intentions, by rejecting Enlightenment norms and intentions they saw that they were adopting something of *Enlightenment*; for them, Enlightenment was not an intellectual achievement, but the normative error par excellence. This is also noticeable on the level of the philosophy of history. In order to eliminate the effect of divine providence in history, the Enlightenment was the first to take seriously the sensual rootedness of man and to initiate the systematic explanation of his actions by sensual (geographical, economic, etc.) factors. By discovering historicity, the Enlightenment wanted to devalue theological norms, but unintentionally it also relativized the universal claim of its own. That is why later the counter-revolution was able to refer to the concrete historicity of the human being in order to - this time intentionally and consciously - reaffirm the universal claim of its own.

- to dispute the universal claim of Enlightenment normativism. Such a claim, of course, was not first introduced into the world by the Enlightenment, since it characterized the traditional theologically shaped ideology of the *societas civilis* just as much. The novelty of the Enlightenment was therefore - as paradoxical as this may sound - not the universal normative claim per se, but the discovery of historicity, which relativized any similar claim. Now, for the first time in the history of ideas, there was a gap between universal normativism and historical observation, which the conservatives took advantage of in order to put the clarifying version of universal normativism out of action in favor of their own. References to the geographical, institutional, cultural and also economic<sup>804</sup> conditions of the human existence now serve as proof that there is neither "the" human being nor universal rights applicable to "the" human being, conceived by an abstract iiberhistorical reason.<sup>805</sup>

The extent to which the conservatives are objectively attached to the anti-intellectualist mainstream of the Enlightenment is shown by their pejorative use of the metaphysical term. If the Enlightenment thinkers had the contrary to all experience

While the "metaphysics" of scholasticism and Cartesianism was rejected and ridiculed, the conservatives now speak with equal contempt of the "metaphysi-

The conservatives, however, had to give priority to the practically useful, in which they also differed from the utilitarian and useless metaphysics of the revolutionary theory, which impudently disregarded all previous political practice and did not start from the existing and therefore the experiential, but from principles that lay in<sup>806</sup> an ideal beyond. However, in this emphatic demarcation against empty and useless metaphysics, the conservatives had to give priority to the practically useful, in which they were also influenced by the utilitarian tendency of the Enlightenment. This is often visible in the conservative defense of religion not as revealed truth, but rather as a socially indispensable institution. Moser, for example, believes that the Christian religion is the best for the political condition<sup>807</sup>, and although he leaves no doubt about the sincerity of his personal belief, he develops a conception of the relationship between truth or error and desired social effectiveness that even a cold-eyed Machiavellian could endorse: "Reason consists in choosing exchanges in such a way that they do wonders").

be exchanged. But again, not a rule to be used from alien pulpits to and to preach them bare and only to the enlighteners. Here, too, the master must not betray himself. The theory, which deals with abstract people, must be correct, the practice, which deals with concrete people, must exchange subjects. Truth is defined in the same fragment in functionalist terms, i.e. as the connection of existing conditions in accordance with a certain economy and with a certain purpose, and religion, which is significantly also mentioned here, is compared to<sup>808</sup>, "music to comfort the unhappy and to soothe the happy. The same profane-utilitarian attitude is also displayed by Brandes, for example, when he writes that many dogmas could be read in one way or another without this making any practical difference, but nevertheless they should be accepted in their traditional form, since "the religion of mankind at all has become its attitude requires"<sup>809</sup> any dogmatics at all.<sup>9</sup>

This profanation and The politicization of the conservative understanding of religion could sometimes go so far that religion was understood<sup>810</sup> in purely legal-institutional terms, i.e. as a complementary instrument of the social discipline to be ensured primarily by legislation. A final step in this direction was taken when the profession of religion became merely a symbol of affiliation with the conservative

<sup>806</sup> Already Mallet du Pan, see above note 659; typically Burke, see e.g. *Reflections*, Works, III, as well as 240, 308, 351, Rehberg, *Code Nap.*, etc.; 191, 94, 201 cf. Moser, *Werke*, IX, 205.

<sup>807</sup> *Works*, IX, 220.

<sup>808</sup> *Werke*, X, 205, From a 202, 204. pragmatic-utilitarian point of view, the question of superstition is also treated, see *Werke*, IX, 149-151, cf. 226.

<sup>809</sup> *Zeitgeist*, (39 Ober Rehberg's related views see Vogel, *Kritik*, ff. 38

<sup>810</sup> See, for example, Rivarol, *Extraits du Journal*, *Oeuvres*, IV, 92; Gentz, *Brief an A. Muller vom 19.4.1819* *Briefwechsel*, 274f.

<sup>803</sup> See the good account by Ferraz, *Histoire*, 11, 94ff., 113f., 144f.

<sup>804</sup> E.g. in Moser, see Lorenzi, *Okon. Geschichtsauff.*, esp. 130ff., ff. 160

<sup>805</sup> The discovery of the national, which the political theory and the historiography of the Enlightenment opposed to the (Christian) universalism of the *societas civilis*, also later (indirectly) inspired conservative patriotism, which turned against the liberal Enlightenment world brotherhood; see Valjavec, *Entstehung d. eur. Kems*, 148.

Balzac's saying "Politiquement, je suis de la religion catholique: Politiquement, je suis de la religion catholique"<sup>811</sup> could not, of course, be uttered openly by a conservative politician.

The cautious view of the religious phenomenon on the part of conservatives, who were of the "Enlightenment" mindset, can be better understood if we remember the gap between the nobility and the clergy, which had existed since the pre-revolutionary period and<sup>812</sup> which only deepened as a result of the increasing modernization of the nobility's way of life and outlook. The struggle against the Enlightenment was first taken up not by the nobility but by the clergy, even though <sup>813</sup>Even during the Restoration, de Maistre reproached the nobility for having lost everything "through its monstrous alliance with the evil principle during the last century" and considered the reconciliation of the nobility and the Church to be a central conservative task for the future.<sup>81</sup>

not reached state<sup>814</sup> . The detachment of considerable parts of the nobility from the

However, the decline of the traditional Christian worldview and terminology during the 18th century was a symptom of an even more extensive secularization in the social and cultural spheres, which was reflected in the imposition of certain terms, so that all parties were now in effect forced to express their concerns constantly or occasionally through these terms. Conservatives have always defended the primacy of God over nature and over human reason, but after the triumph of these concepts in the Age of Enlightenment their conservative use often became unavoidable; in this context, of course, "true" reason now meant precisely <the opposite of Enlightenment reason (i.e., not self-legislation, but conscious submission to authority) and "true" reason (i.e., not self-legislation, but conscious submission to authority).

The "true" nature is not the structurally and functionally autonomous counterpart of God,

The recourse to the clarifying terminology did not in itself imply an abandonment of conservative positions, but it was an indication of the shift in the balance of power that was taking place.<sup>815</sup>

These similarities with the Enlightenment have not been decisive for the content of conservatism, if one disregards perhaps the foundation of the anti-intellectualist attitude. In any case, this shows how similarities arise within a certain intellectual-historical constellation, which actually intensify rather than diminish the enmity. Analogous observations can be made in the field of social morphology,

For example, when the conservatives approach revolutionary voluntarism in their attempts to ensure "organic" development by dirigiste or even dictatorial means. Here we want to explore another social-morphological analogy, which was also unavoidable in the given concrete situation. We know what the conservatives thought about<sup>816</sup> the rootless revolutionary intellectuals. The separation of intellectuals as a social group with specific characteristics, however, was a phenomenon that extended to the entire social spectrum, i.e., it did not only characterize the revolutionary camp. In the circumstances of the nineteenth century, conservatives had to refine and intensify their ideological struggle, and they also called upon the services of intellectuals who were not nobles, who led unstable lives without a secure material basis, and who sought fame or recognition in a manner more reminiscent of Balzac's young heroes than of models of moral ethics - which, of course, often aroused the nobility's disdain and contempt.

But even if the non-noble apologist of the nobility is not a bohemian or not a

If the author was a free-floating and, under certain circumstances, mercenary man of letters, but, for example, a humble civil servant, the condescending manner or the hurtful arrogance on the part of those in the blue was not absent. It should not be difficult to understand the psychological background of Rehberg's question: "But why do the nobility themselves consider their unworthy defenders to be false friends?"<sup>817</sup> There is eloquent evidence of<sup>818</sup> the daily fate of intellectuals in the service of the conservative cause, and most of them will no doubt have felt similarly to Stahl, who once complained to the Gerlachs that they "engaged him like a sanguine for the season"<sup>819</sup>.

Thus, there was a tension between the two sides and "their" intellectuals, which was also reflected in the positions taken by both sides on various issues. It is worth dwelling a bit on this question, because here lies the key to understanding some peculiarities of conservative thought, which lie outside the traditional ideology of the *societas civilis* and cannot be properly understood without taking into account the impact and position of intellectuals in the conservative camp. The non-noble, but literarily gifted apologists of the aristocracy first find compensation for some of the deprivation or humiliation in the fact that they theorize their own particular desires or ideals and then incorporate them into those socio-philosophical constructs which they devise in defense of conservatism in the first place. Thus, Rehberg's bitter question cited above is obviously psychologically related to his chief witness.

<sup>811</sup> See Leroy, *Histoire*, III, 185f.

<sup>812</sup> See above chap. II, para. 3a.

<sup>813</sup> Baldensperger, *Mouvement*, II, 32.

<sup>814</sup> Du Pape, *Disc. Prelim.* = *Oeuvres*, Sp. 244.

<sup>815</sup> See, e.g., Spaemann's analysis of these terms in Bonald, *Ursprung*, 128f., 142ff.

<sup>816</sup> See above sec. 66.

<sup>817</sup> Nobility, 192.

<sup>818</sup> See, for example, the letters of A. Miillers an Gentz von und 24.11.1825=27.1.1826 Letters from and to Gentz, II, f432., 437.

<sup>819</sup> E. L. v. Gerlach, *Nachlall*, I, 350.



The self-valorization effort takes on more sublime and at the same time more demanding forms when, in the ideal versus revolutionary social models designed, a central or even decisive position is reserved for people of the mind.<sup>820</sup> This was not a mere Platonic reminiscence, but rather an overhaul and, at the same time, a reversal of the ideas of enlightened intellectuals about the role of the philosopher or the scientist in the society of unstoppable progress; from a conservative point of view, of course, such self-important plans could be justified with reference to the decisive influence of the clergy in the pre-state condition of Western Europe. Such an intellectual dream is articulated by Fr. Schlegel when he demands in 1803 in his private notes that the election of the king should be left to the scholars and not to the knights<sup>821</sup>. Obviously, it is not only his still unbroken romantic self-confidence that speaks here; for even seventeen years later, when he was well acquainted with the daily realities of work in the service of the powerful, he estimated the social role of the theoreticians (admittedly again in his private notes) almost as highly: It is also known what form the dream of scholarly rule took<sup>823</sup> in Coleridge's project of a "national clerisy"<sup>2</sup>. He said: "The time is past when princes without any theory ruled their country like free landowners and landlords - only through science can we return - after so much has<sup>82</sup> been spoiled and damaged by false theories.

It is obvious that the apologetic presentation of the social ideas and ideals of the nobility had to be somewhat out of the traditional framework due to this admixture of special concerns of conservative intellectuals. The defense of Christianity by authors who possessed a modern literary education instead of a theological-scholastic one had a similar effect. There was a continuous aestheticization of Christian motifs, whereby dogmatics and the doctrine of salvation had to give way to secular points of view and, above all, to the secular style of thinking. Through its aestheticization, Christianity is justified not so much as objective truth, but rather as subjective experience; even revelation is understood as the elevation of the soul into the sphere of heavenly truths rather than as an act of God against passive subjects. The intense feeling as a mode of expression, even as a mode of existence of a powerful individuality, thus becomes the decisive instance, and as a representative of it a Mondanese lay apologetist appears on the scene, who in his poeticizing language is inspired by

<sup>820</sup> Nobility, 182ff, ff:213 cf. already Investigations, I, 62.

<sup>821</sup> Phil. Fragm. = Works, XVIII, 492.

<sup>822</sup> Fragments (1820) = Works, XXII, 15.

<sup>823</sup> Insb. Church and State, VII = Coll. Works, X, 69.

the audience of the salons and attempts to make<sup>824</sup> Christianity salon-worthy. In addition to Christianity, however, the medieval feudal past is aestheticized, which is not so much depicted against the background of concrete legal and ruling conditions, but rather as a fairy-tale-like space for the inspired activity of typified figures, or rather, of the "Christianity of the past".

<sup>825</sup>This stylization of the past was seen by broad circles of the nobility because it served as self-affirmation and could also satisfy some propagandistic needs. But even the aestheticization and sentimentalization of Christianity, which was equally the work of intellectuals and did not fundamentally belong to conservative thought, did not fail to have an effect on certain sections of the nobility, since it corresponded to moods that had taken hold after the catastrophe. Those who had lost their footing and could no longer understand the world listened attentively and with relief when someone said that the Christian resembled a traveler, "qui passe ici-bas dans une vallee de larmes, et qui ne se repose qu' au tombeau", that the universe was full of mysteries, the first of which was man, or that those ultimate truths, "qui demandent le demi-jour et la perspective", could<sup>826</sup> only be discovered by "clans Jes abimes du coeur" -

Although the conservative intellectuals and literary figures, because of their aesthetic

While these constructions count on the goodwill of an aristocratic audience, the liberties they took with regard to the interpretation and representation of conservative ideology sometimes came into conflict with the guiding ideas and goals of current conservative politics. The aesthetically poetic stylization of the past could result in

the drafting of a conservative utopia, in which the pre-state social order was conceptualized and clarified in such a way that it no longer appeared as the institutional framework of aristocratic rule, but above all as an absolutely exemplary human coexistence depicting the eternal cosmic order. A strong pan(en)theistic trait

became noticeable here in the view that God, through his living being, would permeate the world, so that nature and history represented, as it were, his body.

Against the background of this strongly monistic tendency, which was the most radical answer to deistic dualism, the relationship between the rulers and the ruled was understood from the perspective of the idea of identity: monarch and nobility were not only rulers over the people, but were virtually identical in essence with them, since the same all-embracing spirit worked on both sides. Novalis outlined this connection of metaphysi-

<sup>824</sup> S. Rohden's remarks on Chateaubriand (Maistre, 28).

<sup>825</sup> Genie du Christ, Deux. Partie, U, 9-12 = Oeuvres, III, 145ff.; cf. the heres chretien in the first part!, VI, =5 Oeuvres, III, 106.

<sup>826</sup> A. a. Prem0., Partie, I, 2; Deux. Partie, UI, u1. 8-9 = Oeuvres, III, 49,156,17(

The genius of the state shines forth from every true citizen of the state, just as in a religious community a personal God reveals himself, as it were, in a thousand forms. The state and

God, just like every spiritual being, does not appear individually, but in a thousand

only pantheistically God appears whole - and only in pantheism God is whole everywhere, in each individual".<sup>827</sup> This monistic presentation of the *societas civilis* as a paradise, in which the love of all with all ruled, admittedly offered considerable propagandistic advantages when it was possible to launch attacks against the

tyranny of the aristocracy," etc. On the other hand, however, the strict idea of hierarchy and the necessary reminder of the firm boundaries between the estates, which now had to be defended against revolutionary egalitarianism, often came up short, and in this respect the nobility did not show itself to be as generous as "its" intellectuals, who could show themselves to be more generous simply for the sake of the aesthetic effect, especially since it was not their own rule but that of their clients or breadwinners that was at stake. However, politically active and directly responsible conservatives were not very fond of such gallantry, and they also took offense at the fact that "their" intellectuals sometimes indulged in fine intellectual games and threw all kinds of constructions onto paper whose connection with current political questions and ideological tasks was not immediately recognizable. In such products, of course, the intellectuals themselves were allowed to see their own *raison d'être* from their - quite modern - point of view; most members of the conservative aristocracy, however, for whom the fundamental was clear enough, as well as the conservative politicians, as a rule, had other concerns.<sup>828</sup>

Against the background of the ambivalent relationship between conservatism as a socio-political movement of the nobility and "its" intellectuals, the general character and historical development of so-called Romanticism can perhaps be grasped more concretely. The conservatives, who were involved in practical politics, mostly found in Romanticism what they also found disturbing in the intellectuals, including "their" intellectuals: the indiscriminateness of the ego, which followed its own changing ideas and in doing so lost its spiritual and aesthetic identity.

<sup>827</sup> Letters and Works, III, (643Fragm. N r. 2499).

<sup>828</sup> Typical in this respect are Gentz's statements about the different speculative Attempts A. Milller. The discomfort that Milller's writing "Vom Gegensatz" caused him in the years 1804-1805 (see his letters to Brinckmann from u19.9.1804. 27.2.1805 = Briefe, II, 261f., 226, as well as to Muller from u9.1. = 22.3.1805 Briefwechsel, f22., 27f.), was intensified after 1815 by Muller's latest high fliers (see the letter to Muller of 8. 18167. = Briefwechsel, 220f., as well as the letter to Perches of 12. 5. 1817 = Briefe, I, 343); finally, he openly tells his friend that he is making himself unfit as a political propagandist in this way (letter of 8. 10. 1820 = Briefwechsel, 328f.). Metternich did not feel differently about Muller or Schlegel (Srbik, Metternich, I, cf. f283,308,374.); his Influence by the ideas of the Enlightenment (loc. cit., 64f., 95,310,322f., 325f., 337, 355) was certainly also a reason for this.

The two major themes of conservative circles around Fichte and his young romantic admirers, above all Fr. Individualism and subjectivism are the two great sins that conservative circles around Fichte 1800 and his young romantic admirers, first and foremost Fr,

ankreideten- In this way, they indeed met, even if only in a very general way, the  
829

This is a characteristic of the Romantic movement, which must be defined in terms of the Romantic subject, *who* treats the world as the occasion and material for his own unrelenting intellectual experimentation, constructing it from ever new perspectives and on the basis of different attitudes, i.e., according to his own particular figurations; the isolated and emancipated bourgeois individual thus becomes the highest (aesthetic) authority and the victim of the world<sup>830</sup>. Because romanticism is basically the attitude of a subject that feels sovereign, the

<sup>829</sup> See, for example, Gentz's letters to Brinckmann of April 25 and September 17, 1803 (Letters, II, 122f., 154). Terrorists in Literature," cf. Vo gel, Kritik, ff.239

<sup>830</sup> Thus C. Schmitt, Polit. Nevertheless, Schmitt's book as a whole does not remain on the level of this pragmatic definition. An important methodological mistake is that the author tries to illustrate the occasion relationship of the romantic subject to the world not on the intellectual products of romantics, but rather on the personal changes and fates of Fr. Schlegel and A. Millier. As is well known, personal opportunism existed both around 1800 and during all earlier and later times among people of the most diverse convictions, and therefore it is hardly suitable as a concrete explanation of the specifically romantic; furthermore, it is not possible to see how an aesthetic movement can be understood through ethical malstaves, unless one nonsensically assumes that this aesthetic movement, of all things, is intrinsically and necessarily connected with the violation of certain ethical rules. Conversely, Schmitt sees that A. Muller (whose clear distance from the subjectivism of Romanticism is not mentioned - see below) never changed his counter-revolutionary convictions, or that even non-Romanticists, such as Gentz, underwent the transformation from a friendly to a hostile assessment of the French Revolution (on this, see the remarks of Aris, History, 213f.; Aris, moreover, rightly notes that Romanticism had adopted an essential element of the Enlightenment in the form of individualism). Although Schmitt implies that the Romantics, by advocating fixed hierarchical orders, deny their own essence (op. cit. 0.,96 f.), he does not elaborate on this transformation, which no longer takes place within Romanticism but, on the contrary, means a break with it. For example, he attributes the disagreement between Schlegel and Bonald to Schlegel's Romantic attitude (loc. cit., 160ff.)-although Schlegel has in fact made himself the mouthpiece of widespread political-tactical conservative misgivings against the restorative course taken in France (see sections 2 and 3d of this chapter). Salomon (Mittelalter, 70 ff.) does not know anything about this either and thinks that the opposition of "Romanticism" to "traditionalism" would prove the truly verifying, i.e. not "reactionary" character of the former. Rohden, following Schmitt's analyses, made the unfortunate attempt of an ideal-typical stylization of the difference between German and French conservatism; as he claims, in Germany literary and romantic conservatism had existed before aristocratic and ecclesiastical conservatism, whereas the development in France had been the other way around (Deutscher u. franz. Konserv., 104, 106); Moser,



Since Romanticism in itself remains independent of any content and therefore seeks and gives itself quite different contents, it can appear under both conservative and revolutionary banners - i.e. only the above-mentioned definition of Romanticism can do justice to the pan-European scope of this phenomenon. It is precisely because of this innate mutability of Romanticism, which goes back to its individualism and subjectivism, that the conservatives - for whom individualism and subjectivism were the foundations of modernity and the spiritual roots of revolution - have been extremely suspicious of it from the very beginning. It is a provable fact that romantics, who put themselves in the service of conservatism as a socio-political movement of the nobility, at the same time gave up being "romantic" in the specific sense of the word mentioned above. The sovereignty of the sacrificial and inexhaustible individuality that inspired Novalis and his friends in the last decade of the eighteenth century already disappears in the work of A. Miiller<sup>831</sup>, who with 1803

Romanticism in all sharpness

settles the score. The idealism, the romantic rage, the sentimentality, the enlightenment...

Tieck and Fichte belong together just as sentimentalism and idealism (as "quintessence" and "highest summit of enlightenment"), since both pursue<sup>832</sup> the detachment of the unbridled revolutionary subjectivity from the real. There is a necessary connection between this disavowal of the romantic attitude in all its philosophical and political forms and the public practical activity for the conservative cause. For conservatism means a belief in a fixed, supra-individual order made by no human subject (let alone improvised on the basis of aesthetic criteria), i.e. a radical rejection of all subjectivism and individualism. Obviously, there was no way around the necessity of a choice between romanticism and conservatism.

If this is understood in all its implications, then the talk of a "late Romanticism" (i.e., of a Romanticism that supposedly continues despite the (i.e., a Romanticism that allegedly continues to exist despite the Romantics' commitment to a fixed supra-individual order) must appear misleading, since it confuses personal destinies and conceptual structures; in principle, however, the clear distinction between the personal transformations of the Romantics and the ideal type of the Romantic attitude must be maintained if the (intellectual) historical facts are to be satisfactorily explained. The thesis of the continuity of Romanticism is usually supported by the assertion that in Romanticism

as a whole, the idea of individuality and the experience of community were originally intertwined, although in Frühromantik individuality was in<sup>833</sup> the foreground, while in Spätromantik community was. But even if we were to assume (which is by no means self-evident) that a reconciliation of *romantic* individuality with the hierarchically structured community is possible at all, we must still ask: can individuality remain the same before and after its disciplining by the fixed supra-individual order of the community? And vice versa: is the community, as it is seen and experienced from the point of view of the romantic, sovereignless subject, the same with that stable hierarchical community which precedes every individuality and does not at all need its richness of feeling, but on the contrary demands its disciplining? Even if individuality and community coexist in the thinking of Romanticism, <hole at the time of the predominance of individuality

<sup>833</sup> Kluckhohn, *Personlichkeit und Gemeinschaft*, 1-2. According to Kluckhohn, Romanticism differs from conservatism in its respect for living individuality, which has not allowed it to ossify into a mere reaction (loc. cit., 98 ff.). In doing so, Kluckhohn starts from a very narrow and defective concept of conservatism, which is why he also overlooks the fact that the social doctrines he considers specifically romantic are rather typically conservative. He makes this mistake again because he does not look for the specificity of romanticism where it is actually found, namely in the world-creating (aesthetic) activity of the romantic subject. He rejects Schmitt's definition (loc. cit., 96 note), but he has only the vague assertion to counter it that Romanticism was neither entirely subjectivist nor entirely universalist. Poetzsch, too, sees the specificity of Romanticism in the balance between the love of freedom and the love of tradition; the history of Romanticism is thus only a change in the balance and a striving to encompass this opposition (Studien, 37). This, however, does not explain why the actual development, at least in the field of "...political romanticism", proceeded from the upper weight of the subject to the upper weight of the community (with a drastic restriction of the conditions and an essential change of the concept of the former) and not vice versa - or why such a development took place at all. Poetzsch contrasts the romantic balance of dynamic ego and community as a space for the development of the powers of this ego with the alleged intellectualism and atomistic individualism of the Enlightenment (a. a. ff. 48.), by which he commits a typical error of Romantic studies (especially of the older ones) in a typical way: he takes over the Romantic conception of the Enlightenment in order to present Romanticism in a favorable light against the Enlightenment understood (or rather condemned) in this way. On the basis of the same romantic conception of enlightenment, Romanticism was also praised for having discovered collective individualities such as states and nations in their historical uniqueness (see, for example, Below, *Deutsche Geschichtsschr.*, 8 ff.). This double use of the concept of individuality, which at one time meant the sacrificial personhood of the individual, at another time an individuality, which is supposed to mean the sacrificial personhood of the individual, and at other times a superindividual entity, conceals the real contrast between the romantic and the conservative, as well as the eventual subordination of the former to the latter; in both cases, individuality cannot be spoken of in an undifferentiated way, if only because collective individuality as a construct of the romantic subject or as a hierarchically structured disciplinary framework of all individuals looks essentially different in its status (see below).

Rehberg, Brandes and Marwitz or - on the other hand - Chateaubriand thus never existed.

<sup>831</sup> As Meinecke (*Weltbürgerertum*, 141) has already noted.

<sup>832</sup> S. the letter from Miillers to Gentz from 25.6.1803 Briefwechsel, 16f.



(i.e., at the actual time of Romanticism), the community is not affirmed as the reality of the *societas civilis*, but is rather constructed by the aesthetic activity of the Romantic subject; it is thus largely a fictitious community that embodies the (aesthetic) values represented by the Romantic subject and is therefore conceived in such a way that, if it were real, it would provide the perfect space for the development of the abilities and talents of that subject; In this respect, this community is hardly different from a huge audience that the romantic artist has put under his spell. It is against this aesthetic background that the construction of the conservative utopia of which we have just spoken emerges; the conservative mistrust against it was therefore not only due to its occasional fraternal-egalitarian traits, which were partly disguised reminiscences of earlier revolutionary sympathies of its originators, but also due to its kitsch character, which made the traditional Christian noble ideology fade and put the rule of the *oikos* leaders in the care of kitsch artists and sages. However, the community that the (former) romantics portrayed and defended in the interest of the conservative cause and the struggling nobility was substantially different. It was not a fiction of a romantic sacrificial subject, but, since the latter had meanwhile laid down its arms, an approximate intellectual reproduction of the *societas civilis*, in which the ideological priorities and the relations of domination were clearly recognizable. Idealizations and embellishments existed here as well, but this time they did not result from the urge for aesthetic effect, but rather served propagandistic purposes; what remained of the old romantic vein was now either used for journalistic purposes and effects or kept alive privately and in fragmentary form. The Romantic subject was dead, the modern intellectual with his inner divisions and rationalizing tendencies lived on.

#### IV. THE DISSOLUTION OF CONSERVATISM AND THE DISTRIBUTION HIS HEIR

##### 1. The assimilation of the aristocracy by society and the disentanglement of the Conservatives from the ideal of the *societas civilis*

###### *a. The development in France*

The French development after that shows 1830 the causal connection between the fate of conservatism and the social position of the landowning aristocracy particularly clearly:

the collapse of the latter in France destroyed conservatism as a socio-political movement and caused its ideological sterility. The French example is so vivid because here the change in the position of the landowning aristocracy took place abruptly. As has been rightly pointed out, there are few examples in history of such a rapid and complete downfall<sup>1</sup>. Not only did the landowning aristocracy lose any significant influence in political and parliamentary life (despite its successes in defending protectionism), but it also definitively ceased to lead economically: industry soon became the main source of wealth, and the landowners' willingness to invest in agrarian economy decreased accordingly. As a class, then, the landowning aristocracy will no longer play<sup>2</sup> an important role in the social history of France. The conservatives in France and in other countries were 1830 clear about the outcome of the catastrophe; Jarcke, for example, stated that in France the aristocracy of money was the only one left.<sup>3</sup>

The conflict between the landed aristocracy and the bourgeoisie, which had been decided and thus overcome on the national level, continued to take place on the narrower horizon of the province, where the aristocracy continued to occupy certain strong, if isolated, bastions. Now, however, this sometimes strong local aristocracy no longer formed the lonely summit of the social hierarchy, to which the rich bourgeoisie looked up with reverence and envy, but rather formed a distinguished and separate part of the world of the "notables," and its often intense local activity showed that it was a part of the "notable" world.

<sup>1</sup> Lhomme, *Grande Bourgeoisie*, 37.

<sup>2</sup> A. a. 0. 40, , 37, 42.

<sup>3</sup> Verm. Sehr., I, 175 note.

The existence of a legitimate industrial and commercial bourgeoisie facilitated the accommodation of the landowning aristocracy with the fact and ideology of bourgeois society, and, in addition to their still lively self-confidence, their gradual adaptation to the existing institutions, which, under the circumstances, was a prerequisite for a successful career of their most ambitious members. The existence of a legitimist industrial and commercial bourgeoisie facilitated the reconciliation of the landowning aristocracy with the fact and with the ideology of bourgeois society, and the fact that parts of the old bourgeois and official aristocracy - as well as members of the noblesse d'empire - supported the Orleanian dynasty and largely accepted the rules of the new social reality had a similar effect. The unsophisticated legitimists thus had no other way out than to retreat to their provinces and gitters in the name of unswathed principles and loyalty, to continue to cultivate their fine manners with ostentatious contempt for the vulgarity of the new ruling class, and finally to indulge in their memories, their romanticized clarification of the connthood, their utopian expectations - and their never-ending factional struggles in political isolation<sup>4</sup>.

The different willingness or ability of the various wings of legitimism to adapt was reflected in its division into three main tendencies, i.e., an absolutist one, a legalist-parliamentary one, and a legalist one, which, however, argued for extra-parliamentary action. The result of the interminable oscillation between conservative radicalism and conciliatory opportunism, and the resulting fragmentation, was political paralysis. An 1840 report by the Ministry of the Interior on the Legitimists stated: "La tete de ce parti, c'est-a-dire les grands proprietaires, restent chacun les bras croises au fond de leurs manoirs."<sup>5</sup> Adhemar, who a little later presented a survey of the legitimist party, rightly considered that its factions, which appeared on the scene after 1830, were at least indirectly a continuation of the main conservative currents of the Restoration period, namely the absolutist (Ultras), the constitutional (Charte) and that of the

The changing, precarious relationships between these fli ghts of the conservative party, as well as the frequent merging of the conservative constitutionalists with the liberals, had resulted in the victory of the latter and, beyond that, in disintegration and confusion in the conservative camp. This situation worsened when the Legitimists tried to make a new start after 1830. In trying to formulate a common program, "ils cesserent de s'entendre. Chaque fraction du parti pretendait faire prevaloir ses maximes particuliers sur les idees des autres." The accompanying revival of old differences thus led to the aforementioned formation of a new party.

The formation of various factions in the wake of the earlier conservative tendencies-<sup>6</sup>.

Symptomatic of the decline of French conservatism, however, is neither this fragmentation per se, which 1830 was accompanied by sometimes bitter struggles for direction, nor the momentary socio-political weakness of legitimism after the painful blow of the July Revolution, but rather the disengagement from the classical world of ideas of the *societas civilis* that became visible in this situation and at this time.

Demonstration philosophique" a new systematic version of his social doctrine). Although it is not openly stated, and often remains unacknowledged, that the traditional conception of law has now become obsolete and useless in sociopolitical terms, in practice it is argued not from its principles but in terms of the urgent need to somehow stay in the game in this biirgerian age of rapid progress. Conservatism is thus often defined in terms of progress, the actual implementation of which is thus tacitly acknowledged, if not endorsed. Legitimists continue to protect <las ancien regime - and in this they follow

z. Bonald<sup>7</sup>, for example - but it is characteristic how little some of them identify with the cause of the pre-revolutionary aristocracy and how persistently they reject the The "true" progressive role of the monarchy. Fouque d'Arles, for example, set himself the goal of demonstrating the achievements of the French monarchy in the sense of "true" liberalism and argued that the "usurpations" of 1789 and 1830 had unfortunately hindered<sup>8</sup> the march in the desired direction. As evidence of this "truly" liberal attitude of the monarchy, among other things, its struggle against the "seigneurs feodaux" is cited, who had behaved just as despotic as the present "pretendus liberaux qui nous gouvernent"<sup>9</sup>. From Henry IV to 1789, France experienced an epoch of steady rise, which had shown itself in the consolidation of the national unity, in the extension of the liberties and in the demand of commerce, industry, arts etc.; the liberal development culminated in the constitution of 1791<sup>10</sup>, whose good beginning was taken up again by the Charte.

In such statements it becomes clear that the more real liberalism gained ground, the more willing some legitimists were to replace old-style conservatism with "true" liberalism (which also had consequences in terms of content and not just symbolic significance) in order to come to grips with the fact that the "real" liberalism was not the "real" liberalism.

<sup>6</sup> Parti legitimiste, esp. 41-43.11,18,

<sup>7</sup> See above chap. III, para. 2; cf. Tudesq. Notables, I, 221.

<sup>8</sup> Esprit de la Monarchie, I, (6, 145.

<sup>9</sup> A. a. 73.0.,

<sup>10</sup> A. a. II,0., esp. 158, 212,175,163et seq.

<sup>4</sup> Tudesq. Notables, I, ff8,196232, (, 225; Remond, Droite, (79, ff.52

<sup>5</sup> Tudesq. Notables, I, 233-235.

The surrender or radical reinterpretation of classical conservative principles was particularly noticeable in the case of that wing of legitimism. The surrender or radical reinterpretation of classical conservative principles that took place in the process was, of course, particularly noticeable in that wing of legitimism that accepted participation in the political game even under the now prevailing liberal rules of the game. In this respect, it is very eloquent how Locmaria, for example, uses a central principle of conservative social doctrine to deduce the necessity of such participation: "Quelle est la base de l'ordre social? La religion, sans doute. Or, c'est la Loi politique qui règle ses rapports avec l'Etat; c'est la Loi des finances qui entretient son culte. Qui fait la Loi cependant? Les députés. Qui nomme Les députés? Les électeurs" <sup>11</sup> The neuralgic link of this chain of arguments lies in the thesis that the deputies and per implicationem

<The sovereign legislators were the (electoral) people. From the daily confirmed experience that, in spite of all respectable assertions of the traditional ideology of the *societas civilis*, law and legislation are <losh practically man's work and expression of a human will under certain circumstances, there arises here a factual reversal of the theoretically assumed priorities: religion still be the basis of the state, but it is in its turn <l conditioned by the legislation of this same state. It is precisely this drastic - though perhaps not entirely deliberate or intentional - change in principle that ideally bears the attitude, open to all reservations, to the new society, its economy and its politics. In this case, this openness goes so far that Locmaria does not want to equate legitimism with nobility alone. The title of nobility, he writes, is "un fardeau, si ce n'est un frein ... Les legitimistes forment un parti politique qui recrute dans tous Les rangs, et dont la hierarchie est exclusivement fondée sur le talent et sur l'honneur" <sup>12</sup> . The detachment of the Legitimists from the nobility and its transformation into a people's party is recommended due to an elementary fact: "l'ancienne société est malade ou morte"; and the conservative politicians, who have to pass the hard tests of competition within the bourgeois society, must be cut out of the appropriate wood and show by their abilities to the French, "quels seraient

<sup>3</sup>Locmaria's plea for the radical modernization of conservative politics is not an indication of a friendly or tolerant attitude towards the July monarchy, but it is precisely this that testifies to how strongly the pressure of the new circumstances was felt, which required a reorientation; only a firm attitude with simultaneous active participation in the real existing new society allows, in his opinion, the effective defense of the interests <sup>14</sup> united in legitimacy <sup>1</sup>. This is therefore <las e ntsc heidende neue

Criterion underlying the demand for modernization of conservative politics: conservative politics becomes the politics of interests; in view of the obvious irretrievability of the past, it is no longer guided by the ideal of the *societas civilis* but by concrete and limited goals, tacitly assuming that the framework for realizing these goals could only be the new bourgeois-capitalist society. Political theology or theological politics is no longer asked for, except in moments of rhetorical heightening; on the contrary, <sup>1</sup> even terms that were at the top of the classical conservative vocabulary are now pragmatically inflected, namely in their relation to interest politics. Thus, the legitimist Locmaria prosaically judges the once God-blessed king in the following way

tum: La royauté n'est point une pagode: c'est un intérêt; elle n'a de prix que par le mal! qu'elle épargne et par le bien qu'elle fait" <sup>15</sup> .

Not all conservatives under the July monarchy thought or acted this way, but on the other hand, those who did not want to think or act this way were also unable to give conservative theory and practice a new impetus, or at least to keep it at the former high level. As far as theory was concerned, de Maistre and Bonald remained the great teachers and masters even after 1830, but their works were not read as concrete instructions for action, and moreover their theoretical subtleties, premises and implications became less and less important; in them the average conservative sought and found buzzword-like leitmotifs that could be loaded with pleasure and used without careful consideration of the context. A halfway passable application of classical conservative doctrine to the disputes that daily tested the coherence and patience of the Legitimists, moreover, was not well conceivable; for the Legitimists were still struggling over the mistakes made and opportunities missed during the Restoration, their Catholic loyalties might falter after the improvement of Vatican relations with the July monarchy, and, finally, a part of them wanted Napoleon's national accomplishments of the July monarchy to be a success. of them wanted to incorporate Napoleon's national achievements into the conservative ideology, while many others were very much opposed to it.

..Because of the inability of classical conservatism to provide the guiding star of conservative action after the nobility had ceased to be the bearer of coherent conservative politics, the conservatism of those who did not want to follow the path proposed by Locmaria became increasingly loose and sentimental in thought, living either on memories or on a partly ritualized and partly hysterical cult of the person of the legitimate successor. With the forced verbalization of life, the old specific noble values also faded and appeared now in general formulas, which in their vagueness allowed adaptations and acceptances, since they were also used for the "con-

<sup>11</sup> Devoirs, 13f

<sup>12</sup> A. a. 0., f31

<sup>13</sup> A. a. 29.0.,33,

<sup>14</sup> A.a.0., 26f8

<sup>1</sup> A. a. 0. , 34.

servative" citizenship were quite acceptable: Family, tradition, love of country, religion, etc.<sup>16</sup>

Accordingly, the socio-critical theses and the socio-political demands of legitimist conservatism became more general and vague. By this is meant that the concrete reference to the pre-state conditions of the *societas civilis* and to the clear ruling position of the nobility is now generally missing, when, for example, liberal democracy and parliamentarism, the money addiction of the *homines novi*, or the hectic and corrupt urban life in his

contrast to the alleged rural idyll are den<sup>1</sup>ounced.<sup>7</sup>

This obel are blamed on the bourgeoisie, but the nobility as a real bearer of a comprehensive alternative is no longer seriously considered. And to the extent that such an alternative does not appear on the conservative horizon, the conservatives concentrate their firepower on certain issues that affect their immediate interests or are on the agenda of political topicality. In response to the liberals' claim to be the people and to have dethroned the legitimate monarch precisely in the name of the people, they repeatedly point out the gap that exists<sup>18</sup> between the 94,000 eligible voters and the politically lawless masses. In addition to this constitutional criticism of liberalism, they regularly take up the motive of the insatiable greed for profit of capitalism, and in their struggle against the system of "usure" they have heard<sup>1</sup> anti-Semitic tones (Rothschild, etc.).<sup>9</sup> Thirdly, they take issue with the economic and financial policy, which, because of its orientation to the growing needs of industry and commerce, is<sup>20</sup> inflating the national budget, driving up the national treasury and taxes. And finally, they are fighting the state bureaucracy, which, acting in the interests of the ruling bourgeoisie, is continuously restricting the influence of the large landed property on provincial life, demanding decentralization and "assemblies provinciales," or trying to incite<sup>2</sup> the country against "Paris."<sup>1</sup>

Oppositional activity on this narrow programmatic basis, especially in view of the existing fragmentation of forces, could not stop the decline of legitimist conservatism. Under Louis-Bonaparte, it lost even more momentum and hardly influenced events<sup>2,2</sup> It seems to live less on its own strength and more on its hostility to the Orleanists, who knew how to unite with the bourgeoisie, the separation of Church and State, and the separation of the Church and the State.

<sup>16</sup> Tudesq, *Notables*, I, 212ff., esp. Cf215,218,227.. Locke, *French Legitimists*, ch. IV.

<sup>17</sup> On these motifs in Balzac, see. Guyon, *Pensee politique*, 634ff.

<sup>18</sup> Adhemar, *Parti legitimiste*, 30(; Locmaria, *Devoirs*, 24.

<sup>19</sup> Fouque d'Aries, *Esprit de la Monarchie*, I, ff;151 Tudesq, *Notables*, I, 228.

<sup>20</sup> Locmaria, *Devoirs*, 14(; Adhemar, *Parti legitimiste*, 23.

<sup>21</sup> Tudesq, *Notables*, I, 224.

<sup>22</sup> Remand, *Droite*, 104(

pragmatically accept secular liberalism and offer a tangible example of the convergence of (anti-socialist) liberalism and (no longer specific) conservatism that is already taking place, in that they emphasize the elitist-aristocratic aspects of old liberalism out of fear of the emerging mass democracy, reject centralism and the birocratization of the emerging welfare state, and advocate the "libertes locales" and the "libertées locales".

They thus strike a chord with their former peers and associates, who, however, because of the dynastic

dispute are<sup>23</sup> little used- Under this common, though often with

Although French conservatism can live on under the umbrella of old liberalism and at the cost of its specific features, it has no precisely localizable socially influential supporter and no coherent ideology of its own; the loosely connected basic motifs mentioned above therefore center around the person of the respective pretender to the throne. The strong monarch is also at the center of the conservative constitutional designs that attracted more general interest at the beginning of the 1870s, when a somewhat real chance to restore the monarchy presented itself for the last time. The strong position of the monarch was accompanied by a weakening of the state (decentralization, reduction of state expenditures, etc.), while the social question was to be solved in a corporative and paternalistic way.

law and free access for all to all offices of state<sup>24</sup>. Variations of the same program were put forward by the French royalists during the following decades. The problematic pairing of a strong monarchy and a weak state was also the basis of the Comte de Paris' pre-World War II drafts, which contrasted the atomization of plutocratic society with corporate organization, the special demands of agrarian economy, etc.; universal suffrage was to continue to apply, but the voter was to be able to decide only on the issues familiar to him within his corporation. Characteristically, the call was for an alliance between the monarchy and the people against the money oligarchy, which would ensure the smooth continuation of the

The idea was that<sup>25</sup> the old relationship between the king and the people would be rebuilt in opposition to the feudal aristocracy. As this reminiscence implied, the nobility could no longer be considered as a stitze of the planned social organization - but no other stitze was in sight either. The strong king floated in a social vacuum, and it also remained unclear how the meanwhile bloated state and the power of the plutocracy

The question of how the proposed decentralization could meet the demands of a modern economy was also raised. Such questions

<sup>23</sup> A. a. ff.O.,125 138(

<sup>24</sup> Osgood, *French royalism*, chap. I, esp. 12(

<sup>25</sup> A. a. ff.O.,138



are, however, ambiguous. For these plans were neither right nor wrong, neither conservative nor progressive; they were only reveries of relics on the margins of actual historical development.

*b. The development in England*

We know how traditional conservative ideology was reduced to the mere fiction of the unbroken continuation of the *societas civilis*, while in social and constitutional reality an oligarchy, which as a rule thought in modern utilitarian terms and had long since turned its back on feudal patrimonialism, ruled<sup>26</sup> sovereignly in decisive respects. English conservatism, however, as we encounter it in Burke's later work, experienced a powerful revival in the struggle against the reform-minded New Whigs in the 1770s and 1780s, on the one hand, and in the context of the pan-European reaction of the nobility against the French Revolution, on the other.

Notable theorists such as Coleridge continued this new thread of English conservative thought, but they initially lacked a domestic focus, as the struggle against Napoleon absorbed all English energy and reformist or reactionary activities had to be put on hold. After 1815, when domestic issues again came to the fore and the antagonism between Whigs and Tories was increasingly combined with class conflict, English conservatives also applied their theocratic principles to the domestic situation, producing the last significant version of English conservative thought in the 1830s and 1840s, the time of the fierce disputes over the Reform Bill and free trade. It did not find any important successors and did not become the ideological banner of a broad political movement, because in 1832 the country's traditional social and constitutional form underwent a change that made conservative politics in the old sense extremely difficult: for in contrast to the aristocratic parliamentarism of the 18th century, parliamentarism after 1832 brought about the decline of the former (aristocratic) self-government<sup>27</sup>. If the victory of the new liberal-industrial forces was so rapid and relatively easy, an important reason for it was, of course, the fact that capitalist conditions were also established in the countryside, i.e. within the landed interest.

<sup>26</sup> See above Ch. II, Sect. 5.

<sup>27</sup> Meisner, *Monarch. Principle*, f8.

themselves had<sup>28</sup> prevailed. The resulting ease and breadth of the reform's victory also explains why the new version of English conservative thought could not have a bright future ahead of it, especially since a development had been in the offing since 1832 that ended when conservatism merged with (old) liberalism.

In the tense atmosphere of the years immediately preceding the passage of the Reform Bill and in connection with it, the conservative complaints against the "corrupt townsmen" and the urban life determined by commerce and industry were naturally voiced especially loudly. This might have been effective rhetoric, especially from the pen of important poets,<sup>29</sup> but it was not a realistic political program. What the English conservatives of the time had in mind as a constitutional alternative to the Reform Bill, however, can be seen in Coleridge's proposals, which sum up the widespread conservative ideas of those years. We recall that, after 1789, a firm conservative constitutional strategy, faced with the danger of a monopolization of sovereign power <by a liberal or democratic legislature,> was to call for the strengthening of the Crown so that it had<sup>30</sup> legislative powers in addition to its executive power. This is precisely also for Coleridge <las Hei lmittel. It seems to him unacceptable "that the King has been reduced to a puppet" and must cover with his signature even such laws or measures as he approves. In opposition to a parliament that every day takes a further step on the way to democracy, Coleridge wants to endow the crown with decisive legislative powers, especially since he realizes that the real power lies not in the executive, which is led by the king (although only nominally), but in the sovereign legislature. In connection with this, he also questions the relatively recent identification of Parliament and the House of Commons, wanting to revive the old unity of King, Lords and Commons as the nation that has become visible<sup>31</sup>. As a conservative, however, he by no means sees this strengthening of the Crown as a first step toward absolutism, since "abso lute Monarchy" and "democratic Republic" repel him equally<sup>32</sup>. He thus does not claim <lie sovereignty for the monarch, but disputes the sovereignty of Parliament or the House of Commons, and thus leaves nothing to be desired in his con-

<sup>28</sup> What the conservatives wanted, of course; Coleridge, for example, complains that the new money economy "has gradually taken possession of our agriculture," *A Lay Sermon*, Coll. Works, VI, 214f.

<sup>29</sup> On these motifs in the old Wordsworth see Brinton, *Pol. Ideas*, f60.

<sup>30</sup> S. above ch. III, sec. 3bc.

<sup>31</sup> Talk, 625.. 1831, 320.2.1833, 12.. 1833 = p. 198; 119, 195, *Church and State*, X-XI = Coll. Works, X, ff82

<sup>32</sup> *Church and State*, XI = Coll. Many years earlier he had already equated Jacobinism and royal despotism, see *On the Errors of Party Spirit = The Friend*, Coll. Works, IV, f216.

servative state, there is no sovereign power - only a balance of groups, forces and interests<sup>33</sup>. The notion of equilibrium, however, remains ambiguous, serving him both as a safeguard for the old and as a de facto recognition of the new, to which he feels compelled. Coleridge clearly rejects the "spirit of commerce" and considers the new political economy to be an "ideology of greed"; he contrasts them with spiritual values and an aristocratic rule based on these values<sup>34</sup>. The power of the new and the necessity of compromise with it are nevertheless visible in his effort to integrate commerce and industry into his "ideal constitution".

To this end, the education of the leading class of modern society is being developed. economy in the conservative spirit of "clerisy. In his openness to the new, even Coleridge went so far on some points (e.g., free trade or factory acts) that it aroused<sup>35</sup> the ire of some Tories. This was a sign of the growing uncertainty in the conservative camp.

Coleridge was the last Englishman who, in succession to Burke and also under the influence of continental thought, presented a comprehensive conservative theory. In it still lives - or at least is revived - the legal and constitutional conception of the *societas civilis* against its metaphysical background, although the asthetization of some motif betrayed the hand of the intellectual and sornt the turn of the times. According to her, there is no longer a coherent conservative theory with a claim to generality, but conservatism articulates itself as an ensemble of certain basic themes, each of which comes to the fore, individually or together, as a result of current disputes. In the situation that arose immediately after the passage of the Reform Bill, the young Disraeli referred to these themes in his polemic against the "oligarchic" Whigs, whom he accused of deliberately destroying the unity of church and state, the House of Lords, the constitutional power of the crown, and the traditional jurisdiction of the countryside, and of imposing<sup>36</sup> centralization everywhere as an indispensable prop of his own rule. The payment of these issues was equivalent to a conservative program. It was admittedly known that behind the opposition to the individual questions mentioned by Disraeli there was a more general and deeper one; but from then on fewer and fewer attempts were made to emphasize the latter and to work out its ideological content. The young Disraeli confined himself in this respect to a rather superficial polemic against utilitarianism and Bentham's contempt for wisdom.

of the ancestors<sup>37</sup>. However, he combined his own reminiscence about his country's political tradition with slogans and demands that gave conservatism a modern and dynamic shape, although several old conservative topoi were cast aside as useless. The

He does not oppose the "oligarchy" of the Whigs with a landowning Tory oligarchy, but he wants to turn the Tories into a "national party", and for his peculiar populism he finds precedents in the appropriately interpreted politics of Charles I, Bolingbroke or Pitt the Younger; thus he constructs a conservative tradition with very special and novel characteristics, and at the same time tig he calls into being the refreshing legend of Toryism<sup>38</sup>. In it stands the strong king at the head of the people as a guarantor of their liberty and welfare, ruling over the heads of these or those oligarchs. Because the wishes and interests of the broad masses are taken so seriously, "the Monarchy of the Tories is more democratic than the Republic of the Whigs." <sup>39</sup>This is written in a treatise in which the Reform Bill and universal suffrage are roundly condemned<sup>40, 41</sup>. What is significant here, however, is that this adherence to a central Standish principle is not placed in the foreground of the argumentation, but is rather emphasized by praising the unity of the people. Of course, this unity of the people is not to be taken at face value in Disraeli's mouth, especially since its antithesis is the oligarchy of the *Whigs*; the new tone away from the traditional conservative cues, however, remains unmistakable.

The idea of the popular patriot king in the wake of Bolingbroke is central to the political thought of Young England. Manners and his friends remember James II with longing and are enthusiastic about the struggle of the Spanish C arlists-<sup>42</sup> by taking up and varying Coleridge's notion of a national church, they strive for a religious underpinning of conservative populism. The church, the statue of a griindlich renewed and revitalized religious life, is to embrace the whole people, i.e., to reconcile great and small, rich and poor, in prayer and inward uplift, and to realize anew in its schol3 the unity of great-hearted aristocracy and hardy peasantry as it existed in old merry England. In 1842 Manners urged the Tories to follow the example of the French Legitimists and to strive for a union with the people against the capitalist class.

<sup>33</sup> See Calleo, Coleridge, 99f.

<sup>34</sup> See the summary by Calleo, a. a. chap0.,. I.

<sup>35</sup> Brinton, Pol. Ideas, 83.

<sup>36</sup> The Spirit of Whiggism (1836) = Writings, 354.

<sup>37</sup> Vindication of English Constitution (1835), Ch. II u. XI = Writings, ff, 114146.

<sup>38</sup> A. a0. , esp. XXX-XXXI = Writings, ff.215

<sup>39</sup> Spirit of Whiggism, Writings, 340.

<sup>40</sup> A. a. O., 342.

<sup>41</sup> Vindication, XII = Writings, 150.

<sup>42</sup> Whibley, Manners, I, 133,136,75et seq.

Here, the education of the people and their simultaneous embrace of the aristocracy are juxtaposed as a program to what the Whigs wanted, namely equal political rights for all and the spread of the spirit of progress and science<sup>43</sup>. In addition, it is important to note the strong aesthetic-literary coloration of Young England's conservatism, which is also a novel - and forward-looking - phenomenon. Manners and his friends were inspired by Kenelm Digby's exaltation of chivalry, in which the motifs of religious renewal and the bond between aristocracy and people resonate, but above all they were enraptured by Walter Scott's depiction of a heroic life rooted in the primordial, in which they saw, as it were,<sup>44</sup> a vivid conservative program. The readiness with which the aesthetic-literary and the political are mixed together here will increase with time - and not only in England - and represents a very characteristic symptom of the dissolution of classical conservatism.

The ideas of Young England and Tory Radicalism could never become the program of a significant conservative movement, not because they were too far removed from classical conservatism, but for the opposite reason, namely, because the real conservative movement in England broke away even more from classical conservatism in order to move tentatively closer to libertarianism and liberalism. Indeed, serious obstacles stood in the way of populist and traditionalist conservatism. The long-standing capitalist conditions in the countryside, i.e., the commercialization of land ownership practiced for centuries, its interconnection with capitalist enterprises and the associated decline of feudal-patriarchal attitudes made large parts of the aristocracy amenable to utilitarianism and the laissez-faire principle, so that these views had in the meantime become virtually undisputed orthodoxy. Second, an anti-capitalist alliance with the lower classes and the Chartist movement had to entail an affirmation of universal suffrage, which was out of the question for the conservatives, especially not until shortly after 1832. And finally, measures such as the Poor Law, which were intended to demonstrate the new solidarity between the landowning aristocracy and the people, ran counter to the economic interests of the first <sup>45</sup>The real situation, as it appeared in the intertwining of business and interests, suggests rather an attempt to gain the confidence of the "commercial men" and the "manufacturers" from a moderate Tory position.

<sup>43</sup> A. op. cit., 153f, 137f

<sup>44</sup> A. a. 130ff0., On Scott's spontaneously conservative view of life, but also adapted to the new social circumstances, see the fine analysis by Brinton, Pol. Ideas, 108ff

<sup>45</sup> Stewart, Foundation, ff165, cf. ff185

Canning had already tried to do so, and Peel, as is well known, went further and more resolutely in this direction, thus <sup>46</sup>incurring the wrath of the Tory ultras. Under these circumstances, a conservative radicalization such as that advocated by Young England was to be expected - but its ineffectiveness was also to be expected. The breakdown of the whole social order prophesied by the Tory Ultras did not occur, the majority of the old establishment was able to adapt fairly well (if, by the way, the possibility of adaptation had not existed, Peel's policy had had little chance of being seriously undertaken and carried through), and the cries of the party's ideologues finally failed to have any appreciable echo among the wider Conservative masses<sup>47</sup>. The question of the Corn Law led to a practical tripartite division of the party, not because of a real resurgence of orthodox conservatism, but rather because tangible interests were at stake; the opposition between protectionism and free trade did not necessarily coincide with that between old and new conservative tendencies, although it was entangled with them, but its primary importance indicated the extent to which conservative politics had become the politics of interests, that is, the practical acceptance of the rules of the new society. Under the pressure of this reality, even Disraeli, as a young conservative leader, had to forget or suppress the dreams of Young England and show some flexibility toward the middle classes. In order not to open up fresh wounds, restraint was required here, but this was not the only reason for the isolation of the Conservative Party at that time; as long as Palmerston denied the great national common denominator, it was condemned<sup>48</sup> to a supporting role.

If English conservatism recovered from this long period of weakness and soon became the strongest political force in the country, it was not a reward for patient adherence to unwatered principles. It was not a reward for patient adherence to unwatered principles, but was due to the fact that it was opening up and growing stronger at a time when large sections of the middle classes, alarmed or frightened by the democratic missteps of radical liberalism, were looking around for a safe political roof over their heads: For decades now, the industrial bourgeoisie had ceased to associate itself with "Labor" (in its opposition to landed property) along with the factory workers, and as the radicals strengthened their appeals to the working class, it broke away from them; the opposition of the "Liberal Conservatives" to the radicals had already given rise to an urban conservatism during Palmerston's reign. It was from these urban neoconservatives that the initiative and energy for the internal transformation of the Conservative Party came, not from any carefully considered policy of the then

<sup>46</sup> op. cit., 26ff, 92ff

<sup>47</sup> Cf. McDowell, British Conservatism, chap. I.

<sup>48</sup> Blake, Conserv. Party, esp. 61ff, ff.88

conservative fi.hering itself. The new bi.The new bourgeois members of the party displaced the old notables and brought about a modern party organization in the cities, which replaced the old structure of the party revolving around the "men of influence; If in 1868 the Conservative Party drew its parliamentary power mainly from the rural constituencies, which were under the traditional influence of the local aristocratic prominence, by 1885 half of its deputies came from the cities, where their election was governed by a more or less tight party organization.

influence" was thus replaced<sup>49</sup> by propaganda - <sup>9</sup>few people were able to years after the second Reform Bill, Disraeli at least felt able to appeal to all owners and not *merely* to the landed interest on behalf of the Conservatives, while at the same time seeking to win over labor not by anti-capitalist platitudes but rather by nationalist slogans. The prevalence of the general national interest in conservative phraseology and propaganda was symptomatic of the final affirmation of the liberal-parliamentary rules of the game on the part of the conservatives, who henceforth needed voters from all classes, and, moreover, it even constituted an unintentional contribution to the formation of mass democratic conditions. As a people's party, of course, conservatism has been able to win over the working classes only to a limited extent, but it has been all the more successful in that which has decisively characterized its characteristic physiognomy: not only has it made friends with the middle classes, but it has also given them the most secure political guarantee for their property.

Under Salisbury's leadership, the development that had already made good progress under Disraeli reached its climax; now the populist nationalist tones faded away, while the guarantee of property for all owners was emphasized even more strongly. Salisbury is the leader of those conservatives who consider the main task of the time to be the containment of the swelling democratic tide, and who therefore consider it necessary to form an alliance with old liberalism against the democratic advancement of radical liberalism. The election of 1885 was marked by the defection of important sections of the bourgeoisie, who feared the democratic turn of liberalism, from the Liberal to the Conservative Party; the Times spoke on November 30, 1885, of a "general revolt of the English boroughs against the doctrines lately forced upon them under the name of liberalism."<sup>50</sup> In England, therefore, the absorption of conservatism into liberalism took the form of an overtaking of liberal bourgeoisie by conservatism - a conservative party in which bourgeoisie could feel at home was, however, only conservative in so far as

<sup>49</sup> Cornford, Transformation, 45, 64, 66, 41f.; Blake, Conserv. Party, 144ff.

<sup>50</sup> Feuchtwanger, Disraeli, x-xiii; Blake, Conserv. Party, 162; 118, Cornford, Transformation, ( 58(here also the quoted sentence). See also below in this section under d.

it wanted to protect the property of all owners. Conservatism had The term "liberal" thus lost its specific meaning, for the defense of property and freedom could just as well be *understood as* a liberal task; the specifics of the concrete situation, however, determined what this task should be called.

### c. The development in Germany

The crisis and downfall of classical German conservatism as a social theory and movement cannot, of course, be separated from the crisis of the German, especially Prussian, nobility and its gradual assimilation by the new society, and yet it must be noted that this latter crisis preceded the former by a considerable time. This remark should be understood in the sense that the crisis of the nobility, which became<sup>51</sup> noticeable around 1800 with the expropriation of land through indebtedness and sale to the bourgeoisie, as well as with the growing number of nobles and the immense rush for office, did not result in the weakening of conservatism in this first phase, but on the contrary in its theoretical and political increase. The forces of the new society were not yet strong enough to take full advantage of the crisis of the nobility; on the contrary, the crisis stimulated the still considerable strength (of parts) of the nobility to new activity, which, besides its handy social and economic results, produced an emphatic reformulation of the legal conception of the *societas civilis*, an idealization of the nobility and, in general, an ideological revitalization of conservatism. Nevertheless, in the years when this happened, social transformations in favor of the capitalist economic form and political liberalism continued. Under their pressure, the nobility and conservatives had to think about how to save the position of the nobility, which could not be maintained by blind resistance to the new, through timely and timely adaptation. Consequently, the end of these considerations is the abandonment of the ideal of the *societas civilis* and the recognition of the separation of state and society in its concrete implications. Even if the representatives of a reorientation are for the time being in the minority, their views are gaining more and more ground and importance under the compelling influence of the changing reality.

Conservative reform proposals did not first appear in the 1830s; now, however, they often go beyond the framework within which they had operated a few decades earlier in Rehberg's or Brandes's work, and reflect the new position, which is becoming increasingly weak in the already clear long-term perspective.

<sup>51</sup> In summary, Martiny, Adelsfrage.



tion of the nobility. In 1830, for example, Moltke would gladly give up the privilege of the nobility in the army, the noble tax exemption, and the entail, although on the other hand he strongly doubted the feasibility of primogeniture in Germany and proposed no better means of bringing the nobility and the bourgeoisie closer together than the dignity and sociability of the former<sup>52</sup>. A further step in the same direction was taken in 1842 by Schenk zu Schweinsberg, who took his cue from the English model at a time when the latter had long been suspected of liberalism. In his opinion, the introduction of primogeniture, which would lead to the younger members of the noble families turning to industry and commerce, would be suitable for bridging the gap between the landowning nobility and the new bourgeois society; he has nothing against intermarriage and also advocates<sup>53</sup> the abolition of tax exemption and patrimonial jurisdiction. The highest offices are still reserved for the nobility, but there is an unmistakable tendency to reduce class divisions as much as possible. It was clear to those concerned where this dismantling would one day lead: to the unification and homogenization of society, while at the same time separating it from the state; then the nobility would be only one of the social groupings that, like every other, had to fight for its interests within a constitutional regime in order to gain as many advantages as possible from the state. In 1832, old Rehberg emphasized with remarkable clarity that the elimination of class divisions and the equality of rights had to transform the nobility into one interest group among others: If the knighthoods no longer have any interests exclusively their own to defend, they will find the protection they need only in seeking refuge in the camp of the representative system, which was originally so hateful to them and can now become so beneficial. In this camp they must unite with all the other ranks in order to regain the strength which they have<sup>5</sup> lost in their isolated position<sup>4</sup>

As early as the 1840s, the transformation of the nobility into an interest

The representatives of this view did not see all the political consequences of this transformation and therefore thought that they could get along with a stable monarchy and without making too many concessions to liberalism. Biilow-Cummerow's view that material interests were the only solid ground for conservative politics sounded like a bankrupt declaration of classical conservatism; he himself indirectly admitted this when he proposed a new definition of conservatism, according to which the word "conservative," which „until now had not been properly understood by the nobility, could be "preserved.

<sup>52</sup> Ueber den Adel, ff, 2538ff, 49ff.

<sup>53</sup> Ober den niederen Adel, insb. ff., 2035,69ff., f84.

<sup>54</sup> Constitutional Phantasies , ...47f.; cf. Vogel, Kritik, note. 33586.

The term "tending" should<sup>55</sup> not mean "holding on to". Biilow-Cummerow, speaking about the internal disintegration of the nobility and the consequences of the transformation of the knights' knights into

The author, who had<sup>56</sup> a rather precise idea of the "saleable commodity," broke away from the traditional view of the economy as a mere part or aspect of politics (in the old Aristotelian sense) and thus came to terms with the fiction of the supposedly continuing unity of the civil society. His tendency to see<sup>57</sup> politics primarily in its connection with economic and financial questions means precisely the departure from the concept of politics of the *societas civilis* and the recognition that politics (in the new sense) is a matter of the state and therefore interest groups can approach politics only from the point of view of their interests. The determination of the orthodox conservatives to "oppose the clumsy materialism of this [Cummerow's] association, which even asks to take away the manorial rights of honor"<sup>58</sup> implies their adherence to the old concept of politics; precisely in the struggle against the mere politics of interests, E. L. v. Gerlach emphasized that property was "itself a political concept"<sup>59</sup>. The quoted rejection of the However, the "materialism" of the politics of interests did not mean a renunciation of the This was not a dogged defense of one's own material interests, but only a signal of willingness to retain the "spiritual" or "Christian" corollaries of noble property, i.e. patronage, police and jurisdiction. As long as the state did not have the monopoly of legal power, it could not completely separate itself from society; But the transformation of the nobility into an interest group implied its complete incorporation into a society completely separate from the state, so that the rejection of this final separation (in the form of the desire to preserve patrimonial rights) and the rejection of that transformation were two sides of the same coin - just as, conversely, the renunciation of patrimonial rights indicated a willingness to accept the structure and the rules of the game of the new society, oriented toward the economy and leaving all legal power to the state.

Indicative of the new, no longer fully controllable course of events is the fact that even those conservatives who are from a mere pole of interests. not

The new society, however, was forced to fashion itself in a different way, and thus to change its own character unintentionally. This happened because of the need they had felt since the 1840s at the latest,

<sup>55</sup> The European states, f215.

<sup>56</sup> Preußen, II, ff.41

<sup>57</sup> A. a. O., I, ff.226

<sup>58</sup> Thus v. Thadden in his letter to E. L. v. Gerlach of 15.8.1848 = E. L. v. Gerlach, Nachlaß, II, 563. On the conservative opposition to Biilow-Cummerow's "Junkerparlament" and the lively activity of the agricultural associations in 1848, see: Jordan, Entstehung, ff.260-260ff.

<sup>59</sup> Aufzeichnungen, I, 541; see also 424.

party politics and mass propaganda. Initially, conservatives resisted, but they were more easily won over to this modern "politics," i.e., one that presupposed modern society, because it invited and made possible struggle, whereas the restriction to the politics of interests seemed to be a renunciation of all struggle. The conservatives did not realize that they would have to enter the enemy's terrain for *such a* fight. If in the period of undisputed aristocratic rule the bourgeoisie had to organize itself as a class, i.e. to take over the political form of the aristocracy, this relationship was now reversed: a nobility on the defensive developed a party-political activity, the pattern of which had been created by the bourgeois or democratic enemy according to its own fighting needs. This explains his initial "shyness at the very name party" and his alienation from the party system, "which our opponents understood much better"<sup>60</sup>. However, the conservatives, in their counter-revolutionary zeal, very quickly overcame this disadvantage and shone not only in the modest but intensive local organization of associations,<sup>61</sup> but also in propagandistic journalism. When these enemies of all democrats and demagogues had to address the masses in 1840, they were by no means choosy about the means of influencing them. The practice of the "Kreuzzeitung" did not stop at distortion of facts, defamation of persons and purchase of news from highly inadmissible persons<sup>62</sup>; even E. L. v. Gerlach spoke of the "pompous politics of the Kreuzzeitung. This turn to the pompous, however, meant in its way an unintentional modernization and democratization of conservatism - and only in this, not in a moral respect, it is of interest here. There are, by the way, no statistics that would prove that conservatives are more "moral" or more "democratic."

The only thing that is of historical and sociological importance is that the existing potential for moral change in the new society has changed. What is of historical and sociological significance is only that the existing potential for „Immorality" became active in this concrete way under these concrete circumstances. Systematic participation in the new "politics" also had two significant consequences for the character of conservatism. First, the conservatives shifted a large part of their activities from the countryside to the cities, and thus they objectively contributed to the strengthening of the power centers of the new society and the new bourgeois ways of life, in order to be influenced by them in their turn. Secondly, they were <limited by the technical necessities>.

<sup>60</sup> A. a. 10., 326; II, 78.

<sup>61</sup> Jordan, Emergence, 240ff.

<sup>62</sup> A. a. 0., 160, 215ff., 227, 233f.

<sup>63</sup> Records 11., 34, 75.

In the course of the political struggle, the conservative movement was forced to call on the services of people from other strata, who had to show not their origins, but only their abilities (of whatever kind); the style and content of conservative politics had to be additionally modernized as a result.

The political victory of the "reaction" after 1848 did not solve the chronic problems of the nobility and thus did not help the vacillation between "principle" and "principle".

The "politics of interests" <sup>64</sup> did not put an end to this. For social development was not significantly influenced by the course of political events. The general rise of the capitalist economy was reflected in the agricultural sector in the fact that the number of bourgeois landowners increased independently, although the nobility continued to hold the top positions in the hierarchy of landowners; the aristocracy of the nobility and the bourgeois landowning aristocracy became a more or less uniform entrepreneurial class, which did not differ<sup>65</sup> fundamentally in its business methods and social characteristics from the industrial entrepreneur. There is no doubt that the old aristocracy looked down mockingly on the upstart bourgeois owners of manors, and not infrequently resisted the identification of aristocracy and junkery; an anonymous author close to the lords of the estates described the junkery type as follows in 1868: "the most outstanding junkie ... is a bourgeois knight. is a bourgeois owner of a manor. Rich, like few chosen of the old and fortified landed property, proud like a Spaniard, so much conservative that he looks at the 'liberal' Kreuzzeitung with regret, hard like a slave owner, narrow-minded and philistine like a stake-biirger, he places himself with a certain naive insolence and with much pretension in the ranks of the conservative statesmen"<sup>66</sup>. If the landowners of bourgeois origin could not contribute much to the refinement of manners and customs in the countryside, their narrow-mindedness and clumsiness were themselves a good psychological prerequisite for the turn to a pragmatic - albeit fanatically pursued - policy of interests. The overall situation thus encouraged a continuation of the line proposed by Biilov-Cummerov. In line with this, the circle around the "Berliner Revue" distanced itself ideologically and politically from the Kreuzzeitung party. In contrast to the Gerlachs, an attempt is being made here to

<sup>64</sup> These common characterizations often give the impression that the representatives of the political principles were more noble and idealistic than the advocates of the politics of interests. But this distinction has nothing to do with moral categories. In concrete terms, principled politics meant that those concerned adhered to the traditional conception of law or the old concept of politics and therefore did not want to give up their patrimonial rights, while the interest politicians more or less accepted the capitalist conditions in the agricultural economy. It is difficult to determine which of the two it was about two different assessments of the situation and tactics, not about two different ethical attitudes.

<sup>65</sup> Rosenberg, Problems, 17f., 22.

<sup>66</sup> Basicziige, 27.

The circle saw its own "historical significance" in the fact that it tried to make what had been handed down resistant by adapting it to modern developments. The circle saw its own "historical significance" in the fact that, interpreting the signs of the times, it sought to make what had been handed down resistant by adapting to modern developments; this adaptation included, above all, the abandonment of patriarchal ideas, i.e. the fundamental assumption that agriculture must cease to be "anything other than a business. On this general programmatic basis, preparations began in 1867 for the creation of a landowners' party to represent their interests; the Berliner Revue joined this movement without identifying<sup>67</sup> with it.<sup>7</sup>

But the new reality also had to be taken into account by conservatives who were far removed from the concept of a policy of interests, since they primarily thought in traditional ideological terms. In their case, the constraints were sometimes expressed more clearly, even if unintentionally, as Stahl's example shows. In 1858, Stahl noted that among the rural population "a general disintegration into a number of isolated individuals" was taking place, with "some of<sup>68</sup> them individually pursuing profit in trade and commerce, while others were just as individually seeking daily work for their own subsistence. Thus, although basic aristocracy remains the "conservative element in the country," patriarchalism is dead, which is why even the arch-conservative Marwitz could<sup>69</sup> no more embody the "ideal Prussian statesman" than the reformer Stein. Accordingly, the social position of the nobility was defined. It should be "the first among the wealth-producing estates, even if only the first among equals;

- It should have "a continuous possession as an element of permanence", but at the same time it should be an "open estate" and "not depend on birth or on the arbitrary admission of the prince", but everyone should belong to it who "fulfills the material conditions"; the native nobility should have "honorary rights, not political rights", and the landowner should have police power, but not jurisdiction, whereby his functions should always have their patrimonial and political character.

character and take on an "official" character-<sup>70</sup> Wagener's

A little later, the "Staatslexikon" (State Encyclopedia) said that the feudal conception of the nobility was now untenable; no patrimonial or court nobility could exist any more, but only one that was publicly active at the communal level or in the offices of state; and this effect should not be based on privilege, but<sup>71</sup> on the fulfillment of duty and right, on the chivalrous and moral virtues.

<sup>67</sup> Hahn, Berliner Revue, 22ff, 57, 61,70,164ff, 171, 177.

<sup>68</sup> Parliam. Speeches, 91.

<sup>69</sup> A. a. O.,81.

<sup>70</sup> Jur. phil., II, f2,105,107,110,115,123.

<sup>71</sup> Staatslexikon, I, (379,Art.380,384 Nobility). Other articles of the encyclopedia are as follows

This willingness to renounce political prerogatives and to transform patrimonial rights into state functions was tantamount to a recognition or affirmation of the separation of state and society. Some observers who were sympathetic or at least non-polemical toward the nobility now went a step further and posed the question the other way around, namely, they presupposed the separation of state and society as an **irrevocable** fact and then asked what the nobility could best do under these circumstances. Schaffie formulated the problem in 1856 using quite modern terminology. The differentiation of the ideas of state and society," he wrote, "has completely dislocated the old conception of the nobility. As long as state and society had not yet separated, the social and political functions of the nobility were intermingled, but after the disappearance of the latter, i.e. after the independence of the state, a "noble government" in the traditional sense is no longer in question.<sup>72</sup>Its main economic activity will be "industrial agriculture", i.e. agriculture on a capitalist and mechanized basis. From an intellectual and ethical point of view, the traditional legitimation by the legal conception of the *societas civilis* will disappear and instead the special noble virtues such as fine manners, integrity and bravery will come to the fore; scientific and land economic knowledge will supplement the humanistic education of the noble man of the world. Finally, the main political task of this (open) nobility will be to stand up for "moderation"; in order to defend their own interests, they will in turn join together to form a "cooperative", i.e. a party, which will<sup>73</sup> participate in the political game on an equal footing with other such political interest groups.

It is not surprising that such statements and proposals from the side of the classical conservatives - not without good reason - are considered as incomprehensible signs of the

The article shows the assessment of the economic situation in which this revision of the social position of the nobility is undertaken. In the article "Agriculture" (I,245 ), for example, we read that the operation of agriculture requires "a large amount of capital", namely monetary capital. Under the impression of the rapid economic development that is going on, technology and industry are also judged in a more differentiated way: the progress of machinery would arise from a "God-willed impulse inherent in the human spirit", only the harmful side effects would be due to "selfishness", etc. (XIII, 38, 40, Art. Machines). Accordingly, a fundamental distinction is made between "good" and "bad" money and capital, or between "good" and "bad" industry; the intention is not to abolish industry per se, but merely to abolish the "exclusive dominion and exclusive right of mobility and industrial property" (Preface, I, 9f.).

<sup>72</sup> Concept of nobility, 79f.

<sup>73</sup> A. a. 64ff.,0., 73, f67,77., f., f.98102

The people of the city were not the only ones. In earlier times, too, conservatives had said many bitter things about the actual state of the nobility. At that time, however, conservative journalism could easily produce apologies and declarations about the aristocracy as a whole, whereas now the criticism outweighs the criticism and the apologies become more and more quiet and pragmatic<sup>74</sup>. Above all, those who could only be satisfied with the unspoiled ideal of the *societas civilis*, are now unruffled; they deplore the degeneration of all "medieval attitudes", the uniformity and "spiritlessness", the "lazy egoism and egoistic laziness", the "untruthfulness and infidelity in confession", the lack of will to act and to govern<sup>75</sup>. In particular, the effects of the imposition of capitalist conditions in the countryside on the character of conservatism and on the formation of a new type of man are also discussed: Conservatives, who face the crises of the world in a purely negative way and are almost only farmers who have given patrimonial jurisdiction to them, have also gotten rid of the police, and know as little about the moving forces of the century as they do about those of Christianity in their application to the state and time<sup>76</sup>. It is admitted that, in the face of the consequences of administrative centralism and modern industry

The people of the country have shown that "our rotten conditions have not shown themselves to be sufficiently capable of life and transformation,"<sup>77</sup> and they fear the worst: If there is not a revolt or some other 'flesh-cutting' event soon, it will be easy for the ambitious liberal bourgeoisie to take our place. - Why is that? Because the Christian element is so little represented in the knighthood; the Junker makes up the bulk, the liberal bourgeois the largest part<sup>78</sup>.

This internal disintegration of the nobility, the main social pillar of conservatism, had to be followed by disintegration phenomena on the level of ideology. In other words, they created uncertainty and confusion. The conservative reality was divided, and in each of its fragments a certain conservative element lived on, but whoever in the new situation endeavored to reunite the scattered dialogues, became entangled in unbriable antagonisms.

<sup>74</sup> One example for many: the nobility, wrote Marwitz in 1810 (II, 1, 164) „was with the burghers and peasants "a harmless, impassible creature, which goes after its daily food". Nobles "are farmers, a little more skillful than the peasant", while the former nobles were "lords".

<sup>75</sup> E. L. v. Gerlach, *Aufzeichnungen*, I, 444; II, 135, 207, 230; *NachlaB*, I, 197. Cf. Meinecke, *Tagebticher*, f78.; L. v. Gerlach, *Denkwurdigkeiten*, I, f107., 166, 188.

<sup>76</sup> E. L. v. Gerlach, *Aufzeichnungen*, II, 241.

<sup>77</sup> Letter from Friedrich v. Gerlach to E. L. v. Gerlach dated 21. 6. =1863 E. L. v. Gerlach, *NachlaB*, II, .1147

<sup>78</sup> Letter from Berg to E. L. v. Gerlach, a. a. 0, 11,927.

and had to resign, even succumb to the gnawing doubt: Faith has so disappeared from politics and doubt has taken over that one can almost only live from hand to mouth, "79 wrote Leopold v. Gerlach in 1857; already six years earlier, he described the aspects of the once unified conservative ideal that could no longer be harmonized with each other, as well as the interweaving of the directions and opinions that were now fighting against each other, in the following highly vivid manner: But what have we come to because we, authorities and subjects, have renounced the right, have even forgotten it, because we no longer believe in the right, no longer trust it. The emperor does not want constitutionalism, and he is right; the subjects want security against the will of the princes, and they are right; the emperor does not trust the Estates either, and he is right again, if one looks at our two united state parliaments; Dr. Frantz is against the bureaucracy, and he is right too.<sup>80</sup> Liberals pointed to the growing inner discord and theoretical ambiguity of conservatism with understandable *schadenfreude*<sup>81</sup>, but significantly this was also admitted by some conservatives either directly or through attempts to redefine the concept of conservatism. As the "Staatslexikon" had to admit, reality had changed so much in the meantime in the unwanted direction that the talk of "conservatism" no longer had its actual meaning; on the other hand, one did not want to be<sup>82</sup> merely "destructive. As a conservative way out, there obviously remained constructive work within a world that no longer corresponded to traditional conservative ideas; and since this world was characterized, good or bad, by the presence of the forces of progress, it eventually came about that "constructive" conservation and conservatism were defined from the idea of progress in general. In their now constitutive reference to superpowerful progress, they indicated both the intention to preserve the traditional as far as possible, but not by force, and to see to its gradual and painless extinction as far as possible, while at the same time adapting its viable part to the world of progress.

This essential change in content, which the concept of conservatism has undergone since its

<sup>79</sup> *Denkwurdigkeiten*, II, 526.

so A. a. IO., f632.

<sup>81</sup> To the question of what soil should be conserved, each of the designated groups within the conservative party will give a substantially different answer," Rochau, *Grundsätze*, 119. In a speech delivered on April 17, 1862/06, Twesten said that after the recent events "there will no longer be a conservative party in the previous sense in Prussia in internal politics, they have !fearfully departed from all that which under Frederick William IV they called the tasks of conservative or feudal politics". E. L. v. Gerlach noted down these sentences, see *NachlaB*, I, f62.

sz V, (541Art. Conservative).



The fact that the new society was not a part of the nobility's assimilation by the new society can be seen even in later conservative authors, who were certainly not among the advocates of the new society. Stahl, for example, defines the "conservative principle" on the basis of two criteria. According to one, "the existing constitution" and not an abstract constitutional plan must be the starting point for every change and further development; according to the other, the conservative must be characterized by "a certain preference for the existing and a striving for a slower course of change. The fact that "change" is going its own way anyway is therefore beyond all doubt, and the conservative principle is now oriented to this insight. For it is "nothing less than stable," it does not in any way ignore the gripping reforms, where they have been achieved, and the highest energy against abuses and evils .... Its opposition is only innovation, radicalism and destruction"<sup>83</sup>. Leo also defined "conserving" in 1864 terms of progress: "Political conservation means: preserving institutions, customs, rights, in short, the whole content of a political life in a continuous, prosperous, awakening and becoming state - in progress, but in really prosperous progress, and warding off progress leading to dissolution, to decay - as that which is actually regression"<sup>84</sup>. Preservation, then, refers to the pace of change and no longer to a specific social model - however much such a model may be in Leo's mind. That is why Leo thinks that there is no conservative theory and no conservative recipes with the justified claim to be universally valid. In each country, fort schritt and conservatism had their own and unique character; there was no single idea of freedom, just as there was no single idea of the state<sup>85</sup>. The assumption of the concrete localization of law was, of course, a component of the legal conception of the *societas civilis*, in which, however, the concretely localized legal systems were equally under the aegis of the one universal divine-national law. By fading away and losing sight of the legal conception of the *societas civilis*, and as a result of the new definition of *conservatism* from the idea of progress, any *conservatism* universalism is now also renounced, which was an additional indication of the theoretical disintegration of conservatism in general.

Even among the lords of the estates, who considered themselves the "praecipua membra of the conservative party," many assumed that the "nobility as a ruling class" no longer existed in the old sense and that its still existing "nobility" was no longer a "ruling class. privileges often had only nominal value. The lords of the estates, it was said

The people of the new society, who had to "acquire their importance in the political struggles of the time in order to possess it," found that party organization and participation in the political life of the new society were indispensable<sup>86</sup>. The "reality of historical law" and the "historically developed as a point of connection" were to<sup>87</sup> continue to form the programmatic basis of that participation, but this time positive tasks were also associated with it, which were outlined in the perspective of a forward development:

The negation of revolution, i.e. of the absolute breach of law, was the signature of our emergence as a party; the entire legal order, its legal, organizational development and deepening, that is the positive content, the task, the principle of conservative politics.<sup>88</sup> This was concretized primarily in the call to oppose<sup>89</sup> the "aristocracy of blood money, of blood industry, of mere mechanical power," and specifically the legal "preference" of commerce and industry. But since at the same time the loss of the political prerogatives of the nobility was accepted in any case and thus at least indirectly acknowledged that the nobility constituted a part, however prominent, of the new, economically oriented society, this opposition to the capitalist-industrial economy and culture was objectively (i.e. independently of the self-understanding of the conservatives concerned) no longer formulated from the point of view of the *societas civilis*, but actually from that of a certain interest group. Since the new society was not entirely capitalist-industrial, those parts of it that were resistant in this respect had to defend themselves against the more advanced and dynamic ones, using anti-capitalist cues from earlier times. This, however, no longer seriously challenged the separation of state and society that had by then been completed and the loss of the political prerogatives of the nobility, although each of the competing sections of society sought to obtain the favor and help of the state. This double aspect is noticeable in a text such as the 1867 election program of the Free Conservative Party. The separation of state and society is acknowledged here in the form of the view that the essence of freedom lies in "the fact that a sphere of independent will and action, based on law and justice, may assert itself everywhere against a strong government. On the other hand, and for all the fundamental recognition of the necessity of a constitutional regime, the call for strong government even contains a rejection of the separation of powers<sup>90</sup>. This was, of course, not an original demand, since, as we know

<sup>86</sup> Basic principles, 70[18,

<sup>87</sup> A. a. .0 , 71.19,

<sup>88</sup> A. a. 0.,77.

<sup>89</sup> A. a. 0., 19,91.

<sup>90</sup> Mommsen (ed.), Parteiprogramme, 55. Similar in the program of the Prussian People's Association (1861), which also calls for "no foundation": "no establishment and exclusive

<sup>83</sup> Phil. of Law, II, 227£2,

<sup>84</sup> What is conservative? = Nominal. Thought span, 43.

<sup>85</sup> A. a. ff.0.,45

Since <sup>91</sup>1789, the strengthening of the executive and the additional endowment of the crown with legislative powers had been a constant conservative effort in the struggle against the sovereignty of the legislature (elected by the people). Especially in the concrete circumstances of the implementation of the separation of state and society in Germany, the landowning nobility could confidently count on the fact that, in view of its extraordinarily great possibilities to influence the government, its strength would work in its favor.

State" and thus mean<sup>92</sup> "society," i.e., their own group interest.

But this influence of the nobility, or rather of the landowning class, on the state and government was now only in part a continuation or an overlap of the traditional mixture of social and political functions which characterized the *societas civilis*. To a large extent it had to be won <by hard lobbying,> and in this very fact the transformation of the nobility into one of the antagonistic groups or classes of the new society was evident. The conservative demands are formulated as demands of a part of society on the state, admitting in effect that the state is now regarded as the independent authority capable of satisfying or rejecting social demands; and in spite of the still very significant conservative influence on the German state, it can be <hole demonstrated that the latter has by no means always and without exception yielded to conservative wishes. For the last third of the 19. The last third of the century, for example, is characterized by the persistence with which conservative programmatic declarations called for the "elimination of the privileges of big money capital" and the

The demand for the "elimination of inequality", "which has arisen from the existing legislation for land ownership, agricultural business and productive labor"<sup>93</sup>. Such demands, which were primarily aimed at protecting agricultural interests, had, of course, already been raised again and again since the 1850s, when the consequences of industrial advancement became more apparent, and in this respect it can be argued with good reason that there was no abrupt break between the Old and the German Conservatives, for example. On the other hand<sup>94</sup>; however, a significant shift in position did indeed take place, precisely in the sense of E. L. v. Gerlach's fears: although the original

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The rule of money capital; no surrender of crafts and landed property to the doctrines and usury of the time" (op. cit. 45).0.,

<sup>91</sup> See above Ch. III, Sec. 3b.

<sup>92</sup> Thus Neumann, Steps, 9,111.

<sup>93</sup> Program of the Monarchical-National Party (1872) = Mommsen (ed. ), Parteiprogramme, 63 (; Gründungsaufwurf der Deutschen Konservativen Partei (1876) = a. a. 68;0., Konservatives Handbuch (1892), 225( (Art. Conservative).

<sup>94</sup> Thus Booms, Deutschkons. Partei, 10ff., 25ff.

While the willingness to defend the material interests of the agrarians was by no means inferior,<sup>3</sup> the concept of interest was now generally understood in narrower terms, i.e., in capitalist rather than patrimonial categories, and this de facto recognition of the separation of state and society was in turn reflected in the fact that the demands of the landowners were largely formulated in the language of the new society. In the circle of the landlords (and not only in this circle), conservative commonplaces continued to exist<sup>95</sup>, but in the programs of the conservative parties, they were incorporated to a lesser extent and became (merely) individual points within more or less stereotyped payments of demands. Especially those conservatives who followed Bismarck unconditionally lacked a unified, specifically conservative sociopolitical line; they generally advocated a strong state, historical continuity, and the protection of agrarian interests, but the ideological background became increasingly vague and the relationship of sociopolitical demands to it correspondingly loosened. This was in fact not only a "very moderate" but also a very "thoughtless and opportunistic conservatism"%\_ But even the conservatives of the Kreuzzeitung party, who were more independent of Bismarck, were essentially shaped by the change of the spirit of the times to so-called *realpolitik*. They retained only memories of the old conservatives, with most of whom they had hardly come into personal contact, and they also belonged to a different, more modern type of people. Their way of doing politics was concentrated in parliament, the press, and mass agitation, and resembled more the professional politics of liberalism and social democracy than the staunch political habitus of the older generation of landowners, who represented the conservative cause through their own social presence and activity in the place of their personal influence. Legitimism was practically dead, while at the same time the affiliation with agrarian interest representation was growing stronger; not much remained of the old worldly aureole except a pronounced interest in church and school issues<sup>9.7</sup>

The policy of interest of the agrarians united in the Alliance of Farmers finally took a direction that had only distant and distorted similarities with classical conservatism. Old-school conservatives and aristocratic notables are also to be found in the ranks of the League, but they are anything but decisive. The plebiscitary tendencies prevailed, and the ideology became correspondingly petty-bourgeois-middle-class; the status element in the traditional sense receded completely and was replaced by the idea of the people's community, which was based on the petty-bourgeois appendage.

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<sup>95</sup> Gollwitzer, Standesherrn, 208ff.

% Heffter, Cross-Newspaper Party, 38.

<sup>97</sup> A. a. ff0.,43

lizing effect and in its way demands a democratic-egalitarian attitude. The inner contradiction of the whole movement, which showed a longing for pre-capitalist conditions<sup>1</sup> while at the same time using the most modern political means and wonderfully coping with the hectic life under capitalism, was reflected in the ambivalence of its peculiar ideology. On the one hand, there is an organicism, which is the only real common ground with conservatism, and which is based on the aversion to industry and "mechanical" city life, and on the glorification of nature and agriculture; ideas about health and nature, the growth and death of the people, etc., are also taken from the organizational world of ideas. Now, however, this organicist naturalism passes into a Darwinian one, and thus organicism as a theory of unbroken and unconstrained growth is displaced by a structurally opposed theory of relentless struggle for existence, which was completely foreign to classical conservatism in this form. The corporate principle, as represented by the radical agrarians, also loses much of its old statusist character, which was based on the interconnection of the political and the economic within the *societas civilis*, and is conceived rather from the professional point of view, that is, according to the liberal-eclectic criteria of capitalist society. And finally, the fundamental monarchism of the agrarians is badly in harmony not only with their de facto adaptation to the rules of constitutionalism, but also with their distrust of the "liberalism" of the court and the government<sup>98</sup>. This mistrust was already an eloquent indication that this state was no longer the state of the conservatives, and therefore conservatism could no longer be conservatism. As was already noted at that time, the conservative party could no longer call itself conservative, since it obviously did not want to preserve a state that was not governed according to its own principles; and if it demanded the implementation of its own principles, then it demanded a future state, i.e. it ceased to be<sup>99</sup> a state-preserving party in the true sense of the word.

The foreign-policy constellation and the accompanying circumstances of imperial unification, along with internal sociopolitical developments, contributed to the demise of classical conservatism. The increasingly urgent need to conduct foreign policy exclusively on the basis of national power criteria and with regard to the state reason within a Europe that was pushing toward national integration, punished the Christian universalism and the stand- iibernational loyalties of classical conservatism.

<sup>98</sup> On the ideology of the agrarians, see Puhle, *Agrar. Interessenpolitik*, esp. (78, 85, (, 89)103ff., 278f.

<sup>99</sup> Stillich, *The Conservatives*, (28, 46,48.

servativism and provided solid proof of the practical uselessness of conservative principles within the fashionable world. It is therefore no coincidence that Prussian conservatism since 1848 has repeatedly split over fundamental foreign policy issues. For its orthodox fliigel, it was particularly embarrassing that the foreign policy it favored on the basis of dynastic legitimacy criteria turned into a pro-Austrian stance, which in Olmitz or 1859, for instance resulted in a demilitarization of Prussia; This, together with the view, shared by friend and foe, that the ideal of the legitimate Christian state was incompatible with the satisfaction of Prussian ambition in the German sphere, and that therefore loyalty to the former must forever prevent the latter, gradually led to the inner alienation of some of the most energetic conservatives from classical conservatism.<sup>100</sup> The extent of this alienation became clear, The extent of this alienation became clear when the gross violation of the dynastic principle of legitimacy by Bismarck's annexation policy did not cause a revolt of the entire conservative camp against his prodigal son, but on the contrary caused the isolation of the old conservatives around Gerlach.<sup>101</sup> This, of course, had to do with the disarming paradox that the author of this violation was not a revolutionary, but a sprout of the counter-revolution; But this paradox would have been impossible and unthinkable if classical conservatism had not led to a dead end in foreign and national policy. Thus, the anti-liberal forces had to realize the liberal national dreams in their own way in order to forestall liberalism and retain power in the state. This had to cause confusion about the definition of "liberal" and "liberal". „conservatism," "progress" and "reaction"<sup>102</sup>. Many conservatives found a psychologically relieving way out by simply suppressing the question of principle and becoming followers of Bismarck, fascinated by the practical success and the prospects for the future that were opening up for Germany.<sup>103</sup> Thus, for all their loyalty to Bismarck and fundamental recognition of the empire, the German conservatives tried to preserve Prussian independence and autonomy as much as possible; they supported federal concepts and resisted electoral reforms that would strengthen the position of parliament (as an imperial affair); at the same time, they stuck - again, as far as possible - to the dynastic concept of nation, especially since this corresponded to<sup>104</sup> Prussia's multinational ethnic composition. All this

<sup>100</sup> Ritter, *Die preu3. Cons.*, f13., (54, ff78

<sup>101</sup> About these events s. a. a. ff0.,184

<sup>102</sup> Kondylis, *reaction-restoration*, 224-228 .

<sup>103</sup> So also many lords of the estates, see Gollwitzer, *Standesherren*, ff.242

<sup>104</sup> Booms, *Deutschkons. Party*, 33ff., ff., (7989, ff.97

However, this was done on the fringes or in the shadow of Bismarckian priorities and by no means formed the seed of a new conservative beginning; rather, it was a matter of small skirmishes. And even if the standard-colored federalist idea lived on, it was clear to everyone after the Reichsgründung that a Gerlachian "attitude toward other countries, which had been oriented by the domestic political confession," was no longer an option<sup>105</sup>. This departure from the imperial idea and the idea of power in foreign policy was, of course, accompanied by the transformation of the conservative party into a modernized party of agrarian interests.

From the perspective of our particular question, it is important to point out that conservatives did not merely come to terms with the nation-state and the realities of modern power politics under the pressure of events, but also developed rationalizations that gradually condensed into new ideological themes and facilitated the distancing from classical conservatism. Thus, conservatives who, contrary to Gerlach's warnings, supported the war against Austria did not feel that they were betraying their own cause; on the contrary, they were often convinced that they were<sup>107</sup> serving their king, their fatherland and their own honor. As socio-political developments made noble politics in the old conservative sense impossible, while at the same time the opportunities for advancement offered by the civil service loosened<sup>108</sup> the solidarity of individual nobles with class interests, such platitudes and commonplaces replaced the specific conservative ideology. They were, of course, not new in themselves, but in the past they received their conservative meaning from the general ideological framework into which they were placed, whereas now they became independent, forming a quasi-autonomous scale of values that understood and presented itself as conservatism par excellence. Alongside loyalty to the king, love of the fatherland, honor and the fulfillment of duty, Christianity and chivalry are now considered to be hallmarks of conservative attitudes par excellence. In their connection with the fine and sovereign manners this attitude now distinguishes nobles and conservatives from the liberal free-minded or republican bourgeoisie. Although the Junker Angst transformed himself from a landowner into a business

fürher, he still connects with his self-understanding the

The dislike of commerce, finance and the mentality of a highly capitalistic society and the role of a professional defender of the aforementioned characteristics of conservative attitudes<sup>109</sup>. Especially two groups

<sup>105</sup> Thus Westarp, Cons. Pol., I, 153.

<sup>106</sup> Knight, The preul3. Cons., 376.

<sup>107</sup> Cf. a. 162ff.0.,

<sup>108</sup> So also in the circle of the lords of the estates, see Gollwitzer, Standesherren, 213.

<sup>109</sup> Stolberg-Wernigerode, Undecided Generation, 179.

from the bourgeoisie, this aristocracy considers them to be its enemies: the "rich parasites" whose wealth "impresses them so little", and the "rich" people. The "educated" who "do not rise high enough above the uneducated"<sup>110</sup>. In the meantime, however, this dispute has often degenerated into a shadow battle and a hollow matter of posturing and prestige. No one seriously questions the principle of equality before the law, and the general tone is becoming more and more pragmatic. The positions of civil servants and the urban way of life and education in general have led to a "significant consolidation of large elements of the nobility", which<sup>111</sup> is also due to the fact that there are no separate schools for the nobility and that they are turning<sup>112</sup> more and more to science and technology. The sacularization of the worldview of the nobility is even driven by the spread of theories that were modic at that time on a pan-European level, such as social Darwinism, biologism or racism, which were alien to classical conservatism, even opposed to it. If we now also consider the willingness of broad circles of the middle classes to identify with the new conservative values, from loyalty to the König to Christianity, it becomes clear that the preconditions for the demise of conservatism through the loss of all its specific characteristics were in place. This was accompanied by the extinction of noble families, which must be<sup>113</sup> understood in the social and not in the biological sense.<sup>3</sup>

#### *d. Conservatism's Absorption into Liberalism in the Face of the Socialist Gefahr*

Since the last decades of the 19th century, the conservatives, or those who still call themselves conservatives, have seen themselves increasingly forced to enter into an alliance with the (right wing of) liberalism against the growing socialist danger. Thus, at last, the dream of those who had already opposed the democratic-communist tendencies that had emerged during the French Revolution with the common front of all the proprietors is being fulfilled.

want-<sup>114</sup> However, this front is now materializing under substantially different In the end, it was not under the aegis of a nobility that was still inferior in socio-political and economic terms, but after it had lost its political prerogatives as a result of the completed separation of state and society and had become

<sup>110</sup> Cons. Handbook (1892), (8Art. Nobility).

<sup>111</sup> So Tennies, Nobility, 1048.

<sup>112</sup> Stolberg-Wernigerode, Undecided Generation, 180ff., 201f.

<sup>113</sup> Savorgnan, Extinction, 334ff.320,

<sup>114</sup> See above chap. III, para. sa.



into a component of the new society. Property, which should be protected from social democracy, is bourgeois in its essence, it is a saleable commodity without patrimonial aspects, and it is this homogeneity within a highly capitalist society that ultimately makes possible the merger of the owners. In the ideological sphere, a rapprochement is beginning to take place, as liberalism, in its increasingly sharp demarcation from democracy, not only remembers its original clauses of inequality, but also adopts certain social Darwinian motifs (natural inequality, natural selection of individuals, natural selection of the population), natural selection of the elite), to which also many conservatives profess after their disengagement from the worldview of classical conservatism and the legal conception of the *societas civilis* - in short, after the extensive secularization of their thoughts world. Thus one meets halfway - but on the terrain of the new capitalist society. The literature of classical conservatism, which dominated the counter-revolutionary scene in the first half of the nineteenth century, is now replaced by works that declare as their main polemical target the mass democratic phenomena and elaborate the common ideological denominator of (former) conservatism and (newly updated) old liberalism in a completely secularized language and way of thinking. Symbolic for this loosening of the guard, if one may say so, is the fact that the first classic of the genre, namely Tocqueville, came from France, that is, the country where classical conservatism first perished.

As already mentioned, during the second half of the nineteenth century Renan, Taine and others in France, as well as the so-called Victorian critics of democracy in England<sup>115</sup>, followed Tocqueville's path with greater or lesser deviations. In England, the novel mixture of conservatism and liberalism had to take on a paradigmatic and pioneering form for continental thinkers, because it resulted from the unification and liberalization of a conservatism that, at a certain point in history, came to see liberal radicalism and mass democracy as its main enemy. This concept found its clear formulation in the writings of a politician who also sought to lessen practical implementation through his governmental activity: Lord Salisbury. The leitmotifs that dominate his thinking outline quite precisely the ideological framework of the ongoing fusion of conservatism and liberalism: rejection of egalitarianism and the mass-democratic tyranny of the majority, declaration of the struggle between individuals and groups as an eternal law of nature, belief in the social necessity of a natural elite above the respective mood swings of the masses, protection of property - both as a landed interest and as a monied interest.

<sup>115</sup> See above Ch. I, para. 2.

The style of thought of this new conservatism<sup>11</sup> is characterized by Salisbury's aversion to all metaphysics (both revolutionary and the "German" metaphysics introduced by Coleridge and Carlyle in England). The utilitarian attitude and a pragmatic relativism in the question of values, which practically translates into tolerance and respect for all fanaticism; the question of progress and social change, which now arises on a daily basis, is also regarded<sup>117</sup> pragmatically or as a subject of negotiation. Salisbury assumes that the emergence of a strong and diverse democratic movement is the decisive characteristic of the age, the effect of which also changes the function of existing institutions, even if they remain<sup>118</sup> externally stable.

Radicals" and "Whigs" (or "moderate liberals"), namely into a hedgehog that is which seeks equality of rights and property at any price, as well as progress itself, in ignorance of its ultimate goal, and into another which opposes the egalitarian tendency and progress into the unknown.<sup>119</sup>

Salisbury now undertakes a very concise sociological and historical analysis of the development of *biirgertum* and liberalism in order to demonstrate the current need for a bond between the "moderate liberals" and their former conservative rivals. Until, he writes, 1848, labor and *biirgertum* had been allies against "Church, Court and Manours. The gains from this partnership, however, were unequally distributed: "„the middle classes obtained the solid results of favorable legislation: the workmen had the satisfaction of suffering for Liberal principles. 1848 brought to light the hitherto latent clash of interests and swayed the bourgeoisie to the side of yesterday's enemies - at the very moment when they were defeated. Thus the old divisions and classifications became obsolete and misleading: "„The old frontiers separate those who in opinion are not divided, and classify under one name men who now have no principle in common. Both the "radicals" and the "moderates" continue to call themselves liberal, although the main dividing line is no longer between conservatism and liberalism, but between radical liberalism and social democracy, on the one hand, and bigoted liberalism and conservatism, on the other. The „modera-

<sup>116</sup> See the good summary by P. Smith in his introduction to the volume: Lord Salisbury on Politics, esp. 2635.

<sup>117</sup> Pinto-Duschinski, Political Thought, esp. 59ff, 74f, 92, 95ff.

<sup>118</sup> Our Government was called a Parliamentary Government a century ago, as it is now. But the control of the machine was largely shared by the Crown and the aristocracy. Now it is entirely in the hands of democracy. It is impossible to express in words a wider difference," Disintegration (1883) = On Politics, 346.

<sup>119</sup> A. a. 10., 353, 355.

tes" are, of course, forced by their own principles, to which they still adhere at least nominally, to join in the progressive reform policy; but they do so reluctantly, half-heartedly and only on a case-by-case basis, whereas the Radicals" aim at the leveling of all differences and inequalities.

This would inevitably lead to an "assault on property. The hour of the final decision for the "moderates" has thus come<sup>120</sup>. In the process they were guided by the following insight, as formulated by Salisbury in 1862: "The struggle for power on our day lies not between Crown and people, or between a caste of nobles and a bourgeoisie, but between the classes who have property and the classes who have none"<sup>121</sup>. The main task of the government is to protect the property, and therefore the dispossessed should not be allowed to determine government policy by universal suffrage; for then taxation becomes "an instrument of plunder" and the power of the state client „to "plunder the well-to-do classes for the benefit of the poor". The traces of conservative paternalism in Salisbury do not alter the basic individualistic character of his attitude; the welfare of the poor is not for him a task of the state, and therefore the chances of a rapprochement between the Tories and the workers are not likely to be

The Tory Democracy concept is far from being highly valued.<sup>122</sup>.

The alliance, or rather the entanglement, of conservatism with a bourgeoisie which, although it was afraid of progress in the sense of a march toward socialism, could not, on the other hand, rid itself of the idea of progress in the sense of the development of technology, the increase of production and rationalization, and of its economic attitude, had two other important consequences for the content and style of the new liberal conservatism, or conservative liberalism, as one likes: The earlier definition of conservatism in terms of progress became more and more frequent, while on the other hand the questions of economic policy and, above all, of the economy became more and more important.

As the problem of the relations between the state and the economy increasingly come to the fore. This is the focus of a conservative like Cecile, for example, who is in the direct spiritual succession of Salisbury. According to Cecile, conservatism does not want a sterile adherence to the old, but actually a proper mixture of preservation and renewal; the necessity of (peaceful) change is readily admitted, and there is only a warning of the catastrophic consequences of careless progress. This socio-political conception of equilibrium is in turn underpinned by the anthropological assumption, which has since become popular, that in man there is by nature a

<sup>3</sup>On the other hand, Cecile indirectly admits that conservatism is a constant historical phenomenon:<sup>123</sup> It "arose to resist Jacobinism, and that is to this day its most essential and fundamental characteristic"<sup>124</sup>. By using the modern socialism as a mere continuation of Jacobinism, he can likewise equate the former enemies of Jacobinism and the contemporary enemies of socialism, and thus the here et nunc demand for a front of all owners gains a historical dimension and legitimacy. But this overlooks the important fact that the classical representatives of conservatism fought Jacobinism from the point of view of the legal conception of the *societas civilis* and regarded it not as an enemy but as a brother of liberalism and capitalism, while the modern opponents of socialism do just the opposite. As the opponent of socialism that it is, Cecile also forgets the strongly interventionist national-economic conceptions of classical conservatism and is strongly opposed to the intervention of the state in the economy, which must curtail property rights and demand egalitarian tendencies. The reformist zeal of liberalism, which differs from Cecile's conservatism precisely in this respect - and not so much in its general principles of freedom - leads to dirigisme and thus to lack of freedom<sup>125</sup>. Above all, the welfare state has an egalitarian effect, in which social welfare is not considered a "national charity," "national gratitude," or a "matter of expediency," but rather a right of the individual and a duty of the community.

must and may intervene in a regulatory manner, but on condition that the inviolability of property is<sup>126</sup> fully preserved.

Since Cecile, English conservatism was primarily presented as the great alternative to socialism, whereby socialism was understood to mean any expansion of the welfare state, even if it was undertaken by the Liberal Party. The rise of the Labour Party, however, made the socialist enemy tangible in party politics, so that the defense of positions that were liberal in themselves no longer had to be directed against the party that called itself liberal. The first experiences with the Labour governments served as a basis for a detailed description of "conservative" social and economic policy, the principles of which are increasingly becoming the core of conservative doctrine. Government spending, public debt, the welfare state or "demoralization caused by indiscriminate charity," unemployment support, the tyranny of trade union bosses, etc., etc., are all under scrutiny, while at the same time the radical liberalism advocated by Lloyd George is being criticized.

<sup>123</sup> Conservatism, f18,14,9.

<sup>124</sup> A. a. .0.,249

<sup>125</sup> A. a. 0. , 247.

<sup>126</sup> A. a. ff1790.,, f.195

<sup>120</sup> The Program of the Radicals (1873) = On Politics, f304., 327.307,309,

<sup>121</sup> Zit. of P. Smith, op. cit. O., (note 116), 26.

<sup>122</sup> A. a. f.O.,33,45,49; cf. O'Sullivan, Conservatism, ff.106

The ideological background of these social and economic principles seems somewhat banal and distorted.<sup>127</sup> The ideological background of these principles of social and economic policy seems to be somewhat banal and dyed in the wool. It is often assumed that the two supposedly natural tendencies, i.e. the conservative and the progressive, must be reconciled without excessive exaggerations; what conservatism is supposed to contribute to this harmonization of "order and change" is reverence for the past, a religious-moral conception of the authority of the state as well as the rights and duties of the citizen, the preservation of constitutional continuity, and so on.<sup>128</sup> The combination of religious-moral commitment and economic liberalism, as established by some British conservatives in the first decades of the twentieth century, results *mutatis mutandis* in the same scheme that was propagated somewhat later by the so-called neoliberal trend.

As far as economic liberalism in particular is concerned, it is well known that the advocates of the *laissez-faire* principle within the Conservative Party have been<sup>129</sup> opposed to a strong interventionist-paternalist current ever since Peel's time. The reason for the latter's continued presence and influence was partly the persistent need for visible ideological distancing from the Liberal Party, even though the latter was generally accused by the Conservatives of reformist zeal rather than adherence to the *laissez-faire* principle. On the propaganda level, the glorification of the alleged paternalistic tradition of the Conservative Party served to prove that the Conservatives were actually not inferior to the (radical) Liberals in "social" respects either - and, given the general right to vote, this proof was not inconceivable; in reality, the vast majority of Conservatives remembered the party's paternalism when it came to minor concessions, while they rejected the old-age pensions proposed by Lloyd George, for example, by referring to virtues. They rejected the<sup>130</sup> old-age pensions proposed by Lloyd George as excessive or morally damaging, citing virtues such as the individual's sense of responsibility, family solidarity, and thrift. In addition to the ideological function of paternalism, there was also a very practical one. Paternalism was reinterpreted as interventionism, which was supposed to work in favor of the (industrial) bourgeoisie. It was not uncommon for plans to regulate "industrial relations" to be drawn up on the basis of the legend of Disraeli, a friend of the workers, and the original opposition of conservatism to the liberal *laissez-faire* principle.

<sup>127</sup> See, e.g., Hearnshaw, *Conservatism*, esp. f1(, 285 ff, f290, 306.

<sup>128</sup> A. a. ff.0.,1322 f(

<sup>129</sup> On the two trends and their most notable ideologists, see Greenleaf, *Mod. Brit. Conserv.*, ff, f184194(

<sup>130</sup> In this regard, McDowell, *Brit. Conserv.*, f145(

were developed. According to this, capital, management and labor were to be The state would intervene to end anarchy through "a system of industrial law with compulsory conciliation courts" - although (and this restriction is significant) its intervention should not be<sup>131</sup> socialist-biocratic and industry should not be taxed too much. With all (free) reference to the distant time when conservatism fought against liberal bourgeoisie, such projects do not contain the slightest polemic against the modern bourgeois class. Rather, they are to be understood as attempts to come to the aid of the modern bourgeois class in circumstances in which it cannot do without the assistance of the state, which has in the meantime become too powerful. The state is charged with the stabilization of „industrial relations and the market when, as it seems, this stabilization can no longer be achieved by its own efforts and in the interests of the entrepreneurs; the fact that the latter have to pay the price is the inevitable price. Nor is the demand for protectionist trade policies<sup>132</sup> directed against the bourgeoisie, a demand which, by the way, has nothing to do with liberalism or conservatism as such, but which, despite all the *ex post* theorizations and rationalizations undertaken by liberals, has always been a part of the liberalization process.

as well as by conservatives, by agrarians as well as by industrialists at different times on the basis of expediency considerations<sup>133</sup>; their respective concrete meaning has changed accordingly. -

It is impossible to discuss the German development in terms of the fusion of conservatism and liberalism on the soil of capitalist society without correcting some of the prejudices and misconceptions that have been running. The latter are basically a diminution and theorization of the views on the character and course of German history constructed and propagated by the victors of the two world wars with polemical-ideological intent. If, after the defeat of 1918, a hateful anti-Western ideology developed as a defense and compensation in Germany, which was still able to preserve most of its independence and national power, then in this same Germany, which lost its sovereignty and self-confidence after 1945, an ideology of reverent worship of „Western "democracy" spread, as it were as a solemn confession of repentance for the crimes committed.

<sup>131</sup> For example, Bryant, *Spirit of Conserv.*, f19(, f.91 f98(

<sup>132</sup> *op. cit.*, 126((

<sup>133</sup> Around 1850, when the industrial *biurgertum* in Germany demanded that the nation's industry be supported by protective tariffs, the conservative agrarians rejected this for polemical reasons and even called free trade a., "consequence of the Christian religion" or "worship" (*Kreuzzeitung*, 1850, nos. 146 and 211, cf. Stillich, *Die Konser vativen*, 132 f.; cf. Herberger, *Stellung*, 52 f.). As is well known, the situation changed later.

and allegedly from the German Sonderweg more or less necessary sins and crimes. The core thesis of this ideology is that there was no real liberalism in Germany, or that liberalism did not (completely) realize its goals, but instead settled for the powers of the

The latter therefore retained the upper hand and, in alliance with the industrial bourgeoisie, were able to pursue an aggressive policy with disastrous consequences.

The convergence of the aristocracy or the junkers and the bourgeoisie is thus admitted, but not seen as a partnership on the ground of the capitalist social order, but as a capitulation of the latter to the former. Two things are implied here that are directly relevant to our question. Firstly, conservatism is seen with the "reaction" as a rallying point of all - or at least the leading - chauvinist, militarist, imperialist, etc. forces, including the crown and the state apparatus. Thus, his concept loses its historical pragmatism and it is not shown how this or that policy resulted from the conservative in the specific sense of the word, but, conversely, from certain, and indeed the most "aggressive", characteristics of the policy pursued, the conservative attitude of its representatives or bearers is concluded. Under no circumstances can

such a policy have anything in common with liberalism, since it (and this is the second implication), just like conservatism (albeit with the opposite sign), is seen and judged from a general moral point of view and not merely as a concrete historical groil. The (real or alleged) subjection of liberalism to the "conservative authoritarian state" is lamented and regretted so vehemently precisely because it is assumed that "genuine" liberalism, by its very nature, must be humanitarian and "progressive,"

indeed basically ready to develop further at any time into the most philanthropic social democracy. Of course, no militaristic-expansionist policy could be expected from such a normatively understood liberalism; thus, if liberalism had prevailed in Germany in a pure form and all along the line, this country had distinguished itself by peaceableness. It remains unclear, of course, why countries such as France or England, which are held up as models of liberal parliamentarism, should have been

so unconcerned at the very time of the consolidation of their liberal internal constitution as the major imperialist powers. The diplomatic, strategic, and geopolitical factors that weigh on a state regardless of its constitution and force both "progressives" and "reactionaries" to take certain political actions in the same way are also completely abstracted from. It is highly unlikely that a liberal-parliamentary, but equally economically powerful Germany would have avoided conflict with England and France. And vice versa: the First World War was partly caused by states with very different socio-political structures, so that a one-dimensional explanation of it on the basis of domestic factors alone is not possible.

The accusers of the German Sonderweg not only moralize, but also typify the concept of liberalism, whereby it is easy to prove that the ideal type of liberalism has not been realized in Germany. It is not said, however, in which European country of the 19th century this ideal and ideal-typical liberalism existed, and whether, in view of the considerable differences from country to country, such a typification is permissible at all. For a typification of liberalism (or of conservatism or of socialism) can be carried out only on the basis of certain ideological basic motives, <hole we encounter in historical reality only concrete interpretations of these basic motives, which are connected in each case with special concrete situations and ways of acting - we encounter therefore only "special ways", as the toto coelo different socio-political development of the model countries of liberalism and parliamentarism (England, France and the USA) proves. As a class concerned with the attainment of concrete vital goals under concrete circumstances, <las biirgertum has felt no more obliged than any other social class to realize ideal types constructed by moralizing historians or even by its own ideologists, but has always moved within the framework of what is possible and expedient in each case; the question of parliamentarism and "liberties" has also been handled in the spirit of this biirgerlich pragmatism - not to mention universal and equal suffrage. If, therefore, we want to explore factually how the convergence of conservatism and liberalism took place in Germany at the turn of the century, we must keep *German* liberalism in mind and exclude a limine the assumption that that convergence was *already* under the sign of conservatism because Germany's constitution was not thoroughly parliamentarized, or because <las three-class suffrage was in force, or because the ruling ideology was not humanitarian enough, etc., etc. Even apart from the fact that this assumption is based on an unspecific concept of conservatism, it is based on false historical analogies and on an unclear terminology. We will now briefly discuss this in order to outline the German version of the union of all property owners against the socialist danger.

The essential feature of the German Sonderweg is <las absence of parliamentarization, namely the fact that <las country was governed constitutionally and on the basis of the so-called monarchical principle, but not (exclusively) according to the will of a parliament elected by the sovereign people. Now, in England, too, the crown had been de facto disempowered not by <las empow re bending industrial biirge but <l by an aristocratic oligarchy,> while the role of the middle classes in the 19th century had been to radically reshape and reorganize <las already sovereign parliament,> without having to deal anew with the monarchy, which in the meantime had been put out of action. Conversely, the development in France, where the disempowerment of the crown and 1789 above 1830 all of the bourgeoisie had benefited, did not result in a



In both cases, therefore, there was no direct link between the modern parliamentarization process and the removal of the monarchy from power, even though, historically speaking, the latter was a precondition for the removal of the monarchy from power. In both cases, therefore, there was no direct link between the modern parliamentarization process and the removal of the monarchy from power, even though, historically speaking, the latter was a precondition for the removal of the monarchy from power. In both cases - albeit in quite different senses - there was no direct link between the modern parliamentarization process and the disempowerment of the monarchy, although historically the latter presupposes it; From this asymmetry, in turn, it follows that the popularization of society and the victory of capitalist relations in the economy, which primarily interested the bourgeoisie, did not necessarily have to go through a victorious conflict with the monarchy and parliamentarization - not only in the liberal sense, but also in the liberal democratic sense: several variations and combinations are conceivable. To these relativizing considerations must be added the fact that German constitutionalism, under the sign of the monarchical principle, even under the temperamental Wilhelm II. On the contrary, <sup>134</sup>it contained practically significant modern parliamentary elements, so that it should<sup>135</sup> not be regarded as a self-contained phenomenon, but rather as a transitional state from the monarchical to the parliamentary form of government. Any description of the Kaiserreich becomes quite unnecessary when we think of the fundamental equality of rights and civil liberties that prevailed, which, after all, was scarcely behind what England or France had to offer in this respect at the time, and which, especially after 1890, made possible the rise and widespread social influence of the most massive, disciplined, and at the same time intellectually sophisticated democratic movement that all Europe has known: The old German Social Democracy. From the point of view of today's Western parliamentary mass-democratic reality, it is of course easy to find fault with much of this, but if one points out, for example, the discrepancy between the division of electoral districts and the distribution of population in the Empire in favor of the conservative agrarians, then one should at the same time mention that the application of the English electoral system in Germany, for example, had deprived many Social Democratic deputies of their seats.

This constitutional reality of the Kaiserreich corresponded to the socio-political fact of the far-reaching separation of state and society, so that an identification of the monarchy as the bearer of statehood with the conservatives, who in the meantime had become one interest group among others, was not without further consequences.

<sup>134</sup> Huber, The Personal Regiment.

<sup>135</sup> Bockenforde, Constitution Type.

This identification overlooks the fact that the strong position of the monarchy in Germany around 1900 goes back to the actual conditions of the Reichsgründungszeit and should not necessarily be interpreted as an expression of the unbroken power of "reaction"-unless, under Reaction" is unhistorically understood to mean everything that deviates from the ideal type of the human being.

tarian liberalism or socialism. It is undisputed that the conservatives still had very good, or at times even the best, access to the monarch, and also that, especially after the abolition of patrimonial rights and the introduction of legal equality, they hoped to safeguard their social and political interests by means of a strong monarchy. It remains equally true, however, that the Crown, far from being in solidarity with the expectations and demands of the agrarians, for better or worse, kept the door open both to the industrial bourgeoisie and to prominent representatives of the educated bourgeoisie. The frequently manifested solidarity of the bourgeoisie with the monarchy did not necessarily result from a sense of subservience, as is sometimes suggested; the monarchy played - more or less successfully - its role of integration, at least as far as the upper social strata were concerned, even if this was done under circumstances that are not dear to many modern historians. Finally, no talk of "conservative reaction," etc., can dispel the fact that under the Empire German capitalism was able to develop its productive powers to the full and to surpass other countries that had made more progress in terms of parliamentarization. On the eve of World War I, Germany was the second largest industrial power in the world, and this in itself is proof that its socio-political system at that time was by no means conservative in the specific sense of the word, although from the point of view of certain value judgments it can be called "reactionary."

Historians who want to associate parliamentarism and liberalism not only with ideological use, but also with the realization of certain human values, tend to think that an imperialist foreign policy (by definition "immoral") would be incompatible with parliamentarization and liberalization at home; expansionist plans or efforts such as fleet building would thus appear to be an expression and seal of "reactionary" domestic policy. The English and French developments, however, teach us better in this respect, and on the basis of these historical experiences it can be assumed that a large-scale, successful and long-term colonial activity under the concrete conditions of the empire would first and foremost economically benefit the bourgeoisie - which, by the way, was by no means averse to naval policy <sup>136</sup> even the middle and smaller ones, strengthen its internal political position and promote the dissolution of the old "reactionary" domestic policy.

<sup>136</sup> The German fleet is an old liberal demand," Naumann rightly observed (Democracy, 212 cf. 138: "since,.... fleet and expansionist policy are deeply anti-agrarian").

This would make it much easier to support conservatism in the forces of finance, industry and commerce. Max Weber demanded parliamentarization so that the Germans could conduct world politics as a master nation; the reverse is just as true according to the existing historical analogies. It was precisely the fact that Germany was forever excluded from the circle of imperial world powers in 1918 under demilitating circumstances that finally blocked its path to liberal-parliamentary democracy; for it was only in its combination with the feeling of undeserved national humiliation that the economic crisis, along with a number of other factors, undermined the Weimar Republic from the outset and made National Socialism the strongest political power in the world.

Force will be assessed. It is admittedly easy to ex post and then full extent of the German catastrophe, Germany should have stayed away from the imperialist competition, kept the air empire for itself and left land and sea to the French and English. But historical events have their own dynamism, and it is difficult to understand how the most numerous and productive nation in Europe could have escaped this dynamism. Germany has indeed been the belated nation, if we deny that it raised imperial claims only at a time when the planet was already divided among its liberal-parliamentary neighbors.

These observations should make it clear that the rapprochement between German conservatism and parts of German liberalism was not at the beginning.

This was not necessarily due to the "reactionary" nature of the empire, nor was it necessarily a sign of "reaction". It must be emphasized once again that the German movement was (also) able to behave in a politically conciliatory manner because that approach took place on the soil of capitalist society and was therefore practically very little inhibited in the development of its energies. Naturally, the front of agrarian and industrial interests turned against the growing socialist danger; this was no different in England or in France, and seen in this light the German emperor fulfilled his class-moderate integration function even and especially when he railed against the "fatherless journeymen". Many good observers of the social scene of the empire, moreover, thought that within the new capitalist society the new contrast between rich and poor had eclipsed the old struggle between aristocracy and bourgeoisie. While Tönnies pointed to the factors that stood in the way of a complete bourgeoisification of the nobility (the demand for fideicommisses, the strengthening of the militaristic spirit as a result of the victorious wars)<sup>137</sup>, what was more important for him was the fact that "business also came to the forefront of the nobility's interests" and that "aristocracies of birth or of the soil had now, become mere manifestations of the plutocracy. This led to the merger of landed property and capital: "They become silent

<sup>137</sup> Nobility, 1053,1058.

The Conservatives and the workers silently agreed that their own rivalry, no matter how fierce and bitter, was, as it were, normal and historically legitimate, while the claims of the lower classes had to be<sup>138</sup> fought off under all circumstances.<sup>138</sup> That rivalry, however, had already been overcome in the Conservative Party, where, as Westarp recalled, "Junkergefühl" and "Bürgerstolz" could<sup>139</sup> coexist. As early as the beginning of the 1890s, the conservatives had officially declared their willingness to accept "unmeasured demands of the working class . which endanger the social order and the existence of agriculture and industry," to "preserve the courage of their own opinion, even at the bottom, and to gladly refrain from appealing to points of cheap popularity.

to compete with other parties at the expense of political conscience<sup>140</sup>

This

On the side of the industrial bourgeoisie - especially the big one, which, by the way, tried to feudalize its lifestyle - there was a need for allies against the workers' movement and the - as it seemed - dangerous approaches to a more far-reaching social policy. The relationship between industry and the conservatives has never been free of tensions, the economic reasons for which are well known, and accordingly the majority of representatives of big industry remained with the National Liberal Party, where they formed the right-wing wing, always striving to come to an understanding with the conservatives. Less enthusiastic about the idea of an alliance with the conservatives were other parts of the Bürger turn (let us recall the League of Industrialists or the Hanseatic League), which were correspondingly more inclined to embrace the cause of parliamentarization<sup>141</sup>.

During the Weimar period it became very clear that German conservatism - or the socio-political current that still called itself that - was not standing on the soil of "feudal reaction" but, conversely, on the soil of capitalist society, which was already in the throes of a struggle against socialism. Isolated conservatives such as Roder, who longed for the agrarian idyll, who attributed the meanwhile bursting obelisks of Germany to the large-scale industry and its associated militaristic megalomania, and who demanded<sup>142</sup> the complete separation of conservatism from the industrial bourgeoisie, are no longer picturesque phenomena and no one takes them seriously. Rather, thoughts revolve around the question of how the front of all the propertied classes is to come about on the basis of existing economic conditions, with the modern concept of the elite coming to the fore.

<sup>138</sup> A. a. O. 1052, , 1051,1045.

<sup>139</sup> Cons. Politics, I, 36.

<sup>140</sup> Cons. Handbook (1892), (24Art. Arbeiter).

<sup>141</sup> Nipperdey, Interessenverbände, 381-3, 385.

<sup>142</sup> German conservatism, esp. 43ff., ff100, 121.

and completely displaced the traditional concept of class. According to Mayer, the leading upper class, which every society needs, should today be composed of nobles, industrialists, civil servants, merchants and farmers; the law of succession should ensure the continuity of this upper class, but at the same time "fresh blood from other classes should flow in" through the education system. The old opposition between the nobility and the bourgeoisie, which had had a damaging effect, could in this way be overcome and a unified upper class, such as the French, could emerge in Germany, which had<sup>143</sup> successfully defended itself "against the poison of socialism and pacifism. Characteristic of the time and of the tendency described here are also voices that blame the most recent victories of the revolution on the shortcomings and errors of liberalism, but at the same time argue for a conservatism in which basic values of this same liberalism are defended and adopted against their revolutionary interpretation. For example, v. Freytagh-Loringhofen argues that conservatism arose in the struggle against liberal individualism and the liberal atomization of society; therefore, it could also sympathize with the demands of the workers insofar and as long as these demands were opposed to that atomization. The situation changed, however, when social democracy joined forces with a left-liberalism which broke away from the original anti-collectivist attitude of liberalism. But if liberalism betrayed its own flag, conservatism had to take over the role of the protector of the "interests of the individual," namely of "property. The new situation "required conservatism to change its front," even if this did not affect its historical physiognomy: for the character of conservatism, according to v. Freytagh-Loringhofen, was already given by the still persisting opposition to the ideas of the French Revolution, and, moreover, to its "right of inheritance".

The idea of "always recognizing the rights of the individual as well".<sup>144</sup>

The programs of the right-wing parties of the Weimar period reflect in various ways the fact that, at the latest with the introduction of parliamentary democracy and in view of the revolutionary danger that had just been survived, the opposition between conservatism and liberalism had been largely overcome, since the central sociopolitical issue was now moving on a different plane. Nevertheless,] the reconciliation of "conservative" and, "liberal" within the ideology of the Right was somewhat forced and ambiguous. For example, the German Nationalists programmatically advocated a "free economic order" and accepted equal, direct and universal suffrage and the sovereignty of the resulting parliament.

<sup>143</sup> From the nobility, esp. 15,22,23,13.

<sup>144</sup> Thought Content, 10--16.

Equal rights for women they demanded. On the other hand, however, they emphasized the

In addition, there were the demands for a religious and moral foundation of social life and for a strong state,<sup>145</sup> which in this historical moment cannot necessarily be described as anti-liberal. The discord in the ideology of the Weimar Right can also be seen in its popular coloration and in the attempt to assert the principle of authority over the position of the Reich president, while recognizing the constitution, and thus to exclude the legislature from the formation of government, but otherwise to leave it<sup>146</sup> untouched, Although the threat of "collectivism" forced the Right to defend ideologically the "dignity of the person" and liberalism to distance itself from mass democracy, in the end the fusion of conservatism and liberalism, which had already objectively taken place, remained without uniform and homogeneous ideological cover<sup>147</sup>. The reason for this, however, was not that the agrarians wanted to hold on to their old anti-Bürgerian topoi at all costs, but conversely that parts of the bourgeoisie believed they had to turn to the right and consider the possibility of (partially) sacrificing political liberalism in order to keep economic liberalism intact. This, of course, had nothing to do with a conservative attitude in the specific sense of the word, but it resulted from the effort to cope with a situation that could be life-threatening for the bourgeoisie itself. The solidarity of those who believed themselves to be the successors of the old conservatism, and who now constituted a part of the right, with the (right-wing) bourgeoisie, does not prove that they directed this part of the bourgeoisie socio-politically or ideologically, but only that they felt themselves bound to it for better or worse, that they thus identified their own fate with the fate of capitalism in toto. And if, in its turn to the right, the bourgeoisie appropriated popular or authoritarian ideas, this did not mean a desire to restore the social reality to which the conservatives had once been attached, but a polemical act which, while it also had its reasons in domestic politics, was even more connected with the unresolved, indeed now even more complicated, question of Germany's position in Europe and in the world. The radicalization of the Weimar bourgeoisie - and not the role of "reaction" in the society of that time - made possible the spread of the above-mentioned ideas and ideas.

<sup>145</sup> Mommsen (ed.), Parteiprogramme, 536-540.

<sup>146</sup> Jonas, People's Conserv., 13,116.

<sup>147</sup> As Jo nas (op. cit., 15) puts it very well: "Ideology, however, did not always adapt itself to the process of party-political and sociological stratification and led an ambiguous life of its own: an imaginary realm of mere concepts that had a poisoning effect on political discussion.

contributed decisively to the formation of the ideological construct known as the conservative revolution" was apostrophized. But we will have to<sup>148</sup> go into this in more detail.

## 2. The Conservatives and Social Policy in the 19th Century

The study of the social policy of the conservatives - or, more precisely, of the conservative attitude to the question of social policy - belongs to this chapter of our work, because, contrary to the legends in which not only conservatives have believed until today, it documents not the strength and practical effect of traditional patriarchy, but, on the contrary, its downfall as a result of the assimilation of the nobility by capitalist society. This became quite evident at the end of a development that lasted a few decades and was

- if schematizations are permitted here - can be divided into three major phases, which, however, often coexist. Under the impression of the revolution and out of fear of it, attempts are made at first to pursue the Christian charitable activity, which was a medieval heritage, more systematically and at the same time preventively; then the workers' question is played off against the bourgeoisie, with the specific aim of putting obstacles in the way of the expansion of capitalist industry; And finally, such pro-worker thoughts and plans, however superficial they may have been, are thrown overboard at the moment when the rise of social democracy calls for the united front of all the propertied classes.

The succession and coexistence of these phases can be observed quite clearly in the French development. The systematization of charitable activity was already experimented with in France during the Restoration period under the aegis of organizations such as the Congregation. The functioning of the large charitable institution "Association de Saint-Joseph" shows how the conservatives of the Congregation intended to turn the potentially explosive (lumpen) proletarian mass into a useful element of the restorative society. The workers lived together, were cared for together, and were also educated or much more disciplined together in a strict Christian spirit; their services were procured to employers who approached<sup>149</sup> the institution according to their respective needs. In the perspective of the

<sup>148</sup> See section 3d of this chapter.

<sup>149</sup> For details see the (apologetic) writing of Grandmaison, Congregation, 193ff., esp. 213f., as well as Duroselle, *Cathol. social*, 29ff., f38.. Montlosier, who is the Catholic Rich-

The question of the political or social rights of the workers naturally hardly arose in the context of the philanthropy pursued by the Legitimists. This changed, however, after 1830, when the Legitimists searched far and wide for allies to emerge from their isolation. There were strong regrets that workers, deprived of the traditional protection of the guild system, were falling victim to the capitalists' desire for profit, and the inconsequence of liberalism was pointed out, which, despite its promise of equality, reserved political rights for a small minority; some royalists "entendaient merveilleusement avec Jes republicains econduits et trompes, pour demander ... cette extension si promise de la liberte", and against the governments of the greedy bourgeoisie they gladly made "cause commune avec Jes citoyens depossedes de leurs droits"<sup>150</sup>. The Ultras' earlier plans to play off the suffrage of the lower classes against "la vote liberale" were now further spun, and the workers' revolts were also portrayed with sympathy in the legitimist press, since, as was noted, they were directed against the classes moyennes and not against the hautes classes. The heartlessness of the industrial system was contrasted with the charite practiced by the church in the Middle Ages, and a revival of the corporations with the necessary adaptations (i.e., in the form of associations professionnelles of patrons and ouvriers) was proposed.<sup>151</sup>

The restrictions that are explicitly associated with these seemingly generous concessions, however, speak a different language. As far as the political rights of the lower classes are concerned, those legitimists who advocate the "„reforme electorale et le droit commun" declare that they do not thereby lose the right to vote.

principe democratique", but the "„principe national", i.e. the unity of "roi et peuple" against liberalism; by the way, they know that these

„royalistes nationaux" that they themselves form only one wing of legitimism and that the other two legitimist tendencies, i.e., the "royalistes parlemen taires" and the "royalistes absolutistes," do not at all agree with such an expansion of the circle of the politically entitled. the "royalistes parlemen taires" and the "royalistes absolutistes," do not at all agree with such an expansion of the circle of the politically entitled, since they have been able to suppress<sup>152</sup> 793 much less- The legitimists, this time in their entirety, are equally reticent when it comes to the concrete determination of the social measures that are to ease the lot of the suffering working class. They fear that any state interventionism and dirigisme, whatever its intentions and direction, could eventually affect their own property rights, and therefore they do not want to give the state any decisive powers in the regulation of labor relations. Even Villeneuve-

The author, who disliked the Congregation, characterized the activities of the institution with the following words: "tous Jes ouvriers sont aujourd' hui enregimentes et discipbnes" (Memoire, 32).

<sup>150</sup> For example, Adhemar, *Parti legitimiste*22, et seq.26,51

<sup>151</sup> Tudesq, *Notables*, I, ff;219 Duroselle, *Cathol. social*, 201ff.

<sup>152</sup> Adhemar, *Parti legitimiste*, 51ff.



Bargemont, who was the only representative of social Catholicism to play a significant role in the preparation of the law on child labor in factories, considered state intervention in this area a necessary evil; in his view, the state should not set wages, but merely ensure a minimum subsistence level through indirect measures (e.g., compulsory health care). In his view, the state should not set wages, but merely ensure a subsistence level through indirect measures (e.g. compulsory care of the sick); even the corporations *ouvrières* he envisaged should only organize mutual assistance and not negotiate wages. Ville neuve-Bargemont is convinced that the social question cannot be solved by alms, but he does not want to consider<sup>153</sup> more than a systematization of charitable activity under the care of the church. Even the most prominent of the conservative social politicians, Armand de Melun, does not present a comprehensive project for the improvement of the situation of the proletarians, but proposes individual and incoherent measures for the relief of the most acute need. He places his greatest hopes in the moralization of employers and employees, without which, he believes, no legislation could provide a remedy; on the other hand, as a Christian, he remains convinced that, because of the fall of sin, etc., inequality and misery can never be completely eliminated. inequality and misery will never be completely abolished. All this was practically quite non-committal, but even these non-committals seem dangerous or even suspicious to the great mass of conservatives. Most of them do not want to hear about charity; most of those who agree with charity consider it a private matter; and only a very small minority advocates *charité publique*. After 1848, conservative mistrust of similar approaches continued to grow. The fight against socialism now comes to the fore, and nothing is tolerated that could directly or indirectly curtail property rights; even the *charité publique* now appears to the alarmed conservatives as a *verhiillte* socialism.<sup>154</sup>

We recall that the imposition of capitalist conditions in the countryside had already fridged<sup>155</sup> the patriarchal sentiments among the English landowning class. The rule of the oligarchy and its parliament in the 18th century resulted, among other things, in the abolition of the Crown's control over the local power of the noble notables, and this, in turn, meant minor or major reductions in the application of the Poor Law dating from the Tudor and Stuart periods, which was guaranteed by that very control. The Act of Settlement, passed during the Restoration, considerably restricted the scope of poor relief, and the so-called Speenhamland Act of 1795 allowed the large landowners, who had in the meantime grown considerably, to keep the poor in their own hands.

<sup>153</sup> *Economie politique*, II, 198f.; III, 24,98 note155., 170,187.

<sup>154</sup> On Armand de Melun's activity and the development after 1848, see. Duroselle, *Cathol. social*, 216, 220 f., 445 f., 448 ff, 473 ff, 483 ff. Cf. Locke, *French Legitimists*, esp. 196.

<sup>155</sup> See above Ch. II, Sect. 5.

The new Poor Law was one of the first products of the Reformed parliamentary system, and it was a way of keeping wages low by providing subsidies to the poor. Most eloquent of all is the generally positive attitude of the landowners when the new Poor Law was passed in 1834. This law was one of the first products of the

Reformed Parliament and bears the unmistakable stamp of what the English Conservatives used to denounce as a utilitarian and birocratic-centred spirit. Apart from the sometimes rather brutal methods it introduced to discipline the labor of the paupers and to reduce their birth rate, it curtailed the traditional conditions of the

Justices of Peace and accordingly strengthened the position of the central authorities. Nevertheless, no objections were raised by the Conservatives (not only by Peel, but also by Wellington), because it got<sup>156</sup> rid of the country gentlemen's concern for the care of the poor once and for all. An important reason why Peel's policy within the Conservative Party prevailed against the so-called Tory Radicals was precisely the disengagement of most Tories from aristocratic paternalism and their adoption of the new national economic principles, which already <sup>157</sup>had the force

of orthodoxy in public opinion. Peel's opponents also shared the *laissez-faire* orthodoxy in their own way, translating it into the familiar language of the local interest and viewing centralized parliamentary legislation as a threat to that same local interest and its associated rights of property; both wings of conservatism were thus ultimately averse to<sup>158</sup> any significant sociopolitical initiative. The reform legislation of 1846-54/18 was the work of the ruling Whigs and Liberals; the Tories' participation in it was nothing less than enthusiastic, and as far as social legislation in particular was concerned, they only passively supported or even weakened drafts from their own ranks; the usual argument against such advances was concern for state despotism. Disraeli, who only a short time before had lamented the separation

of England into two nations, then displayed a partly indifferent and partly opportunistic attitude: if he in any case voted 1850 (together with Manners) against the Second Mining Act - also on account of his personal friendship with the great mine owner Lord London derry<sup>159</sup>.

If the Conservative Party did little in the period between 1846 and 1866 to win the favor of a mass of people who did not have the right to vote, it did not do much to win the favor of the masses who did not have the right to vote.

<sup>156</sup> Trevelyan, *English Social History*; (552; for the above summarized friiher development, cf. f244. , 482f.292,

<sup>157</sup> Blake, *Conservative Party*, 20et seq. esp. 24.

<sup>158</sup> Roberts, *Tory Paternalism*, 333et seq.

<sup>159</sup> A. a. 0.,331,332,335.

In 1867, the party voted for the second Reform Bill purely for electoral reasons and not because it was concerned about the political rights of the working class; a year earlier, it had rejected<sup>160</sup> a (minor) extension of the right to vote. The party always managed to win over the new voters - at a time, of all things, when the bourgeoisie, frightened by the reformist zeal of radicalism and by the new suffrage law, began to defect to the conservatives. Under these circumstances, there could no longer be any question of an anti-capitalist alliance between Tories and workers; although a vaguely pro-worker tone was adopted and the social question was therefore often raised because it was likely to split the liberal camp, on the other hand the relative weight of bi.rgerism within the party grew steadily, and this had to be taken into account. As a whole, the conservatives did not bend to this necessity. As staunch defenders of property rights in general, it was much easier for them to find a common language with the bourgeoisie. As staunch defenders of property rights in general, it was much easier for them to find a common language with the bourgeoisie than to adopt with a clear conscience the workers' demands that were gnawing at their rights. Inasmuch as they expanded factory legislation or the health and education system during the second Disraeli government, they merely continued, only much more tangibly, the policy of the liberals, without being able to develop their own social policy on a new basis. Their gladly flaunted paternalism stopped at the specter of dirigisme and collectivism and was therefore increasingly i.berfounded by the classic slogans of liberalism. The merging of the ideology of the local interest with the fashionable Jaissez-faire orthodoxy, already observed during the 1840s and 1850s, is now completed, and the fundamental rejection of state interventionism provides the great common denominator (the remnant) of the old conservatism and its (new) bi.rgerlich clientele; the attitude of the Conservative Party to social policy is increasingly <1 conditioned by this way of looking at things. Even the Christian phraseology often used in debates on the social question did not necessarily mean a clear vote for an energetic social policy, since it could be interpreted both in terms of duty toward the needy and in terms of personal responsibility in shaping one's own destiny, and thus in terms of the anti-state self-help principle. Vagueness and non-commitment to the solution of the social question also characterized R. Churchill's Tory Democracy, which actually was an incoherent collection of slogans demanding the political career of its author. To win over the working class, therefore, the Conservatives were left with no other instrument than the nationalist-imperialist rhetoric first used by Disraeli.

<sup>160</sup> Cowling, esp1867., ff.63

own party-political representation of the organized labor movement does not i.iberdauert-.<sup>161</sup>

More nuanced is the history of conservative attitudes to the question of social policy in Germany, where neither patriarchal sentiment died out as fricisely as in England, nor was the landowning aristocracy pushed into the social background as fricisely as in France; it was precisely the close personal relationship of aristocracy and peasantry in Germany that made <sup>162</sup>possible conservative introductions such as the

z. The first of these was represented by von Marwitz, for example. After the wars of liberation, the activity of Christian conservative associations for the care of the poor began here as well, which in itself served to confirm the existing hierarchical relationships. Christian love, so the thinking goes, is the necessary reverse side of the equally Christian sanctioned office of the nobility as the leading class, so the nobility loves by ruling and vice versa; moreover, the consideration of social problems from a Christian point of view had the advantage of being able to<sup>163</sup> interpret poverty as a concomitant of moral depravity. Now, the economic development in the pre-march was both

<The period was characterized both by the generalization of the farm economy, in which free-market criteria increasingly prevailed at the expense of traditional patriarchal rules, and by the emergence of a proletariat in the cities.<sup>164</sup> Significantly, the conservatives of the time were not so much concerned with the future of patriarchalism and their own Christian profession in the new agricultural circumstances, but rather with the lot of the proletarians and the greed of the industrialists. There were, of course, some, such as Leo, who thought that the hardships of their own lives gave the workers a calloused skin, so that they need not worry about them; after all, God knows what he is doing<sup>165</sup>. However, most of the politically active conservatives (also under the influence of the carefully read French legitimist writings) realized frivolously what opportunities the exploitation of the class antagonism in the emerging industry could offer them. Thus, A. Mi.iJler's and Baader's views or denunciations of the inhumane mechanization of labor and the dri.ickenening working conditions in the factories easily found their way into the "Berliner Politische Wochenblatt," which also, of its own accord, denounced the "hunger compulsion" by which the workers were made cowardly and warned the Bi.ir ger t um warned "not to draw the bow too tightly and to suck out the workers' strength in toJlem Obermuth", if it did not want to antagonize the masses of the dispossessed<sup>166</sup>.<sup>1</sup> Now, when the governments are called upon to join with the people against the aristocracy, they are not allowed to do so.

<sup>161</sup> Blake, Conserv. Party, 123f.; Smith, Disraelian Conserv. , ff., 29319ff.

<sup>162</sup> Weis, Vergleich, esp. 13f.9,

<sup>163</sup> Goetting, !dee, ff, 3448.

<sup>164</sup> For details, see Jordan, Entstehung, f54., ff.63, cf. Neumann, Stufen, 37f, 40.

<sup>65</sup> Citation Goetting, !dee, 7.

<sup>166</sup> Scheel, Berl. Pol. Woch., esp. ff;148 Goetting, !dee, 22f. (here also the quoted sentences).

If the idea is to make common cause with the patriarchy of money, this basically means measures whose final practical consequence would have to be a crippling of the unfolding forces of capitalism in favor of traditional forms of production and ownership. For what is demanded is a feudalization of the factory enterprise, i.e. its organization on the basis of patriarchal relations, which would make it just as rigid and incapable of development as feudal agriculture was. Thus, to overcome anonymity and fragmentation, workers should be grouped together in corporations and bound to <las enterprises; the free labor market, vital to the emergence of capitalism, would thus be abolished. The factory owner was to be entitled to the same rights over his workers as a landlord over his peasants - but even this did not mean *carte blanche* for the unhindered development of capitalism; for not everyone was to be allowed to establish a trade, but only those who had the necessary experience and the necessary capital. The new type of entrepreneur would thus have to make room for the old master, especially since councils and companies were to be strengthened at the same time, while certain companies, also corporately organized, were to be taken over by the government itself. The legal regulations for this organization of the factory system were to be laid down by assemblies of the estates, i.e. practically by the nobility<sup>167</sup>.

This hint is clear enough: it is assumed that the social question can be brought under control if only the nobility fully retains its political and institutional supremacy. In this sense, the Gerlachs still believed in the summer of 1848 that the solution of the social question could be found in the political questions.<sup>168</sup> This conviction, moreover, relieved them of the burdensome - and by its very nature actually impossible - task of seeking radically new solutions to the radically new social question. They therefore disentangled themselves from "all the nonsense that is heard about the proletariat and the social question" and held to the view that "the only remedy against communism" was to be found in the fact that property was not selfishly concluded, but was understood as an office entrusted to us by God<sup>169</sup>. Thus, the traditional patriarchalism seemed sufficient if it were extended to industry; on the contrary, the interference of the state and the organization of the proletariat into a fourth estate, which would substantially change the political scene, seemed too innovative and dangerous. If the Gerlachs were more relaxed than other conservatives about the development of industry, it was not because of any preference for capitalist progress or for the modernization of the economy.

<sup>167</sup> On the Proposals of the „Berl. Pol. Wochenblatt" on the Solution of the Social Question see the papers by Scheel, Berl. Pol. Woch., ff.160, and Goetting, Idee, ff.24

<sup>168</sup> Reverberation, I, 107.

<sup>169</sup> Letter from Leopold to E. L. v. Gerlach, July 12, 1850 = Nachhall, II, 618; Denkwiirdigkeiten, I, (6058. 1851).3.

The new economic structures were not based on servativism in the liberal sense, but rather on the false conviction that the structures of the *societas civilis* were still strong enough to absorb the new economic forms without too many shocks - provided that the relations of power remained stable in their traditional sphere and, in addition, encompassed the new industrial sphere.

However, the rapid rise of capitalism in the following years and the resulting increase and massification of the proletariat, as well as the increasingly self-confident appearance of the new type of entrepreneur, made a simple transfer of agrarian patriarchalism to industry more and more problematic with each passing day and stimulated other thoughts and plans among some conservatives. These conservatives thought that, in view of the already rooted social power of capitalism, the struggle against it had to be transferred to the social sphere and carried out with social measures in favor of the workers. If one remained on the political surface, Wagener said retroactively, then only the bourgeoisie had to win, whose "most useful and

The most effective sleight of hand, however, ...is to pass over every inconvenient economic and social question immediately into the political sphere and to drown out<sup>170</sup> the social lamentations of the people with the ballyhoo of political rhetoric about freedom. And this, in turn, can be achieved<sup>171</sup> neither <by the Christian-inspired care of the poor nor <by the transfer of patriarchalism from agriculture to industry, but <by the systematic legislation of an anti-capitalist state. The new role assigned to the state, however, did not actually mean a final farewell to the project of feudalizing industry and to patriarchalism in general, but rather a *de facto* recognition of the fact that capitalist industry had in the meantime become so strong that it could no longer be brought under control without the powerful assistance of the state. If patriarchalism proved ineffective on an individual and voluntary basis, it was now to be replaced by the collective patriarchalism of the state governed by the collective interests of the nobility. Corporate organization, with all that it implies both for the containment of empirical capitalist development and for the disciplining of the proletarian masses, therefore remains a major challenge, even if it is now placed on a broader basis. It is necessary, it is said, that the masses be "disciplined," that they be "directed and made aware of their true interests," that they be, in other words, "disciplined by the deed. by the deed", in other words.

lassen, „how they can be helped if they are committed to an understandable order-

<sup>170</sup> Experiences, II, 65.

<sup>171</sup> Saile, Wagener, esp. 48ff., f.80

The nature of this "reasonable order"<sup>171</sup> becomes clearer when we think, for example, of the opposition of the social conservatives to the cooperatives as envisioned by Schultze-Delitzsch. The individualistic voluntary principle on which they were based seemed unacceptable to them, and in contrast they wanted to preserve the authoritarian character of the corporation, which they considered to be its social essence. For the same basic reasons, they rejected the free individual contract and allowed only the employment contracts concluded by the professional association to be valid. The ultimate political goal of the corporative idea was the transformation of the atomized proletarian mass into a structured class, which was even granted the right to vote according to its position in the hierarchy of the stanc3e<sup>173</sup>.

It *must be* borne in mind that the social conservative plans for the corporatization of industry, as well as proposals such as the participation of the workers in the net profit of<sup>174</sup> the enterprise, were not inspired by general humanistic considerations, but by concrete socio-economic considerations. Like all other conservatives, the aforementioned social conservatives were guided by the observation or fear that industry would eventually achieve absolute superiority over agriculture, thus upsetting the existing social structures and power relations. The state's intervention in the economy, including the corporatization of industry and social legislation, was intended to serve the overriding goal of maintaining the traditional economic and social primacy of agriculture, or at least to establish<sup>175</sup> a balance acceptable to the landed gentry. The rise of industry did not take place apart from agriculture and independently of it, but had direct, obvious consequences for the landowners' wallets. In fact, as the capital profit increased faster than the land rent, the investments in industry were more profitable than those in agriculture, and the value of the land and the landed property of the nobility decreased accordingly. For the same reason, agriculture now had to contend with fierce competition and increasing difficulties in the money and credit market, in which it was shortchanged.

<sup>172</sup> Staatslexikon, II, (486Art. Labor, Workers, Working Hours).

<sup>173</sup> Hahn, Revue, 104f., 136f., 119ff., 122 ff.; cf. Wagener in the preface to the Staatslexikon (I, 8): Nothing against the participation of the people in their legislation, if it is... carried by ...corporations.

<sup>174</sup> Already Radowitz, Fragmente, I = Ausg. Sehr., f11,292. Radowitz admittedly thought that the share of workers should be capitalized in savings banks and placed under state supervision.

<sup>175</sup> Hahn, Revue, ff54. This is explicitly explained by Wagener in his report to Bismarck. of 10 6. 1869, in which sociopolitical measures are proposed. It demands "that the action of the state power, which has hitherto been predominantly directed inward ... and outwardly ... the interests of the commercial and industrial classes, should at least turn in an approximate manner to the interests of the landowning and working classes" (quoted by Saile, Wagener, 147).

This is why the conservatives also opposed the liberalization of interest rates, fearing an increase in interest income. In addition, the expansion of industry encouraged the rural exodus and made previously cheap labor in the countryside increasingly scarce.<sup>176</sup> Conservatives expected the increase in labor wages to lower the rate of profit of industrial capital, to increase workers' consumption of food, and to raise the basic pension accordingly. The corporatization of industry was expected to have the same effect, since it would have to increase personnel and social costs and would also affect the flexibility of enterprises in the market and their innovativeness. Finally, this encirclement of the booming capitalist industry was to be completed by the formation of the crafts by means of modernized guild legislation, since the crafts represented<sup>177</sup>, as it were, the still living embodiment of the antithesis of capitalist mass production.

There is direct evidence of the origin of conservative socio-political ideas not from general humanist but from concrete economic considerations. Their proposals for social improvement concern only industrial workers and exclude the entire agricultural labor force. When it comes to farm workers, social conservatives advocate the traditional service relationship and traditional charity (including corporal punishment and incarceration); proposals such as asset formation for farm workers have not only been sporadic, but have not been echoed at all<sup>178</sup>. The conservatives opposed state-organized care for the poor, which had also placed a financial burden on landowners, while at the same time advocating<sup>179</sup> legal coercion with regard to factory workers; and child protection legislation met with their approval only insofar as it extended to children engaged in industrial wage labor.<sup>180</sup> The Gerlachs' fears that a state social policy that went beyond the limits of patriarchalism would ultimately only strengthen the state bureaucracy at the expense of the aristocracy were shared to a greater or lesser extent, openly or secretly, by most social conservatives and set narrow limits to their respective demands in the matter of social policy. Since labor protection should weaken industry but not strengthen the state, the conservati-

<sup>176</sup> Schiidekopf, Innenpolitik, 43; Hahn, Revue, 96;60, Herberger, Stellung, 29.

<sup>177</sup> About the conservative attitude to the issue of handicraft and its development s. Goetting, Idee, 23; Hahn, Revue, 86,92(, 96ff; Herberger, Stellung, ff;31 cf. E. L. v. Gerlach, Nachlaß, I, 308.

<sup>178</sup> Hahn, Revue, f179., ff.182

<sup>179</sup> Herberger, position, f56.

<sup>180</sup> Stillich, Die Konservativen, 120f.



The opponents of "state socialism" argued that it was the employer, not the state, who had to<sup>181</sup> finance the protection of workers. Potential allies, such as the craftsmen, were warned not to expect everything or much from the intervention of the state, as this would be associated with certain disadvantages.<sup>18</sup> However, in addition to the<sup>2</sup> fear of statist tendencies, purely economic reasons also contributed to the conservative distancing from too far-reaching worker protection. A visible improvement in the situation of industrial workers could not be achieved by the "Leuteot,

The rural exodus will therefore only increase as long as<sup>183</sup>, at least the corporate organiza

The introduction of a maximum working day in industry would also exacerbate the shortage of workers in the countryside. The introduction of a maximum working day in industry would also aggravate the shortage of workers in the countryside, since the increase in working hours would increase the demand for industrial workers.<sup>184</sup>

The conservatives knew and said that their community with the workers' movement extended only as far as the community of opposition to the rule of money capital.<sup>185</sup> Thus the limits of their socio-political commitment were set. The aforementioned objective constraints did not allow them to seriously consider legislative measures that went beyond<sup>186</sup> more secondary issues such as the protection of children or Sunday rest. The principle of personal responsibility and self-help was asserted; accordingly, their practical proposals remained rather meager and unoriginal<sup>187</sup>. The "Christian love" as a guiding star for dealing with the social question<sup>881</sup> could either lead to attributing material need to the Church and thus conveniently relegating the social question to the religious sphere, or to the "religious love" as a guiding star for dealing with the social question. the religious sphere<sup>189</sup>, or to reject the tax on the poor and the state care of the poor, arguing that they would impair the individual's<sup>190</sup> willingness to do good and would not inspire any personal gratitude on the part of the recipient, which would ultimately create a gap between rich and poor.

<sup>181</sup> Richthofen, Transformations, 38,40.

<sup>182</sup> Staatslexikon, VIII, (327 Art. Gewerbe).

<sup>183</sup> Richthofen, transformations, 72.

<sup>184</sup> Stillich, The Conservatives, f122

<sup>185</sup> So the Kreuzzeitung am 7.5.1863., a. III.0.,

<sup>186</sup> Herberger, position, 50f

<sup>187</sup> Rooster, Revue, f67,69

<sup>188</sup> See, for example, Basic Drawings, 91.

<sup>189</sup> Herberger, position, f22

<sup>190</sup> Staatslexikon, II, 612 f (Art. Armensteuer). Elsewhere, the argument is also made against state and for private or church care of the poor; the state is expected to establish schools for the poor, agricultural and industrial schools, etc. (II, 620, 616, Art. Armenwesen).

The government's involvement in this area, as in the development of schools and health care, is welcomed, but it is not recommended to interfere on a massive scale, for the following reason: the government's involvement in this area is welcomed, as in the development of schools and health care. The government's involvement in this, as in the expansion of education or health care, would be welcomed, but massive interference was discouraged, with the following justification:

In the case of events falling within the sphere of public economic welfare, great caution must be exercised, of course, so as not to discourage enterprises through burdensome obligations or expenditures.<sup>191</sup> In these words, the front of all proprietors against the fourth estate is already apparent, and thus the conservative socio-political approaches become even more obscure. It is very significant that the deficiencies of the industrial-capitalist system, which are otherwise trumpeted, are relativized when the polemic is primarily directed at socialism. Then it is said that it would require a "terrible effort" to make all social relations and transactions work with feeling and love, that the complete humanization of work and the complete realization of the human being in it is impossible, because work remains, in spite of everything, "compulsory work" and "painful hard work"<sup>192</sup>. The Christian conception of work thus placed itself at the service of capitalism to the extent that the blo13 philanthropic tendency prevailed<sup>193</sup> within social conservatism.

It would be an optical substitution to infer from the volume of social conservative writing the existence of a broad pro-worker current among conservatives. Nothing less than <las. These writings reflected above all the efforts of a small minority to <las Int er interest of their comrades-in-arms in the social question. When Wagener claimed in retrospect that all socio-political initiatives in the 1850s had come from the conservatives and not from the Catholics, who at that time were in love with capitalism, he obviously meant only himself and a few others, for he added: "the great mass of conservatives still had absolutely no understanding of such questions"<sup>194</sup>. Spacer, too, however, made this

<sup>191</sup> A. a.O. VIII, f338 (Art. Gewerbe).

<sup>192</sup> A.a. XIX0., f317, f319 (Art. Socialism).

<sup>193</sup> On the prevalence of the same tendency in Ketteler's movement, see Bowen, German Theories, esp. 83, 87. Ketteler wisely emphasized "that Christianity and the church do not act on social conditions directly and through more or less mechanical means and institutions, but first and foremost through the spirit that it instills in people" (Arbeiterfrage, 104). The "means" that Ketteler himself proposed were indeed rather meager (106 ff) and based on the principle of self-help; the cooperatives, too, could not expect any state aid, because taxing the wealthy classes for similar purposes would be an "encroachment on property rights" (139).

<sup>194</sup> Experienced,<sup>4</sup> I, 69,61.

masses did not make much progress in this respect<sup>195</sup> It should be emphasized that the vast majority of social conservatives were of bourgeois origin and that the nobility played a subordinate role here, while participating in the political movement of the

conservatism was significantly involved<sup>1</sup>. From the equality of the noble

The fact that the masses were opposed to the social question was a bitter lesson for conservative reformers, as Huber's experiences and statements testify. Huber can be called a conservative if one takes his (rather fuzzy) political ideas as a yardstick, in which the participation of the stangle in an organically structured state and the absolute royal rule of the state are the most important.

violence coexist<sup>197</sup>. His sociopolitical ideas explode

However, he did not substantially alter the conservative framework of the time - not as a result of anti-conservative sentiment, but rather as a result of the essentially non-political character of his thinking, as expressed, for example, in the

Huber showed aversion to those who saw "the raising of social needs merely as a means of satisfying the interests of political parties." <sup>198</sup>In contrast to the party-politically militant social conservatives, Huber understood the social question

not only as a lever to be used against capitalist industry and liberalism, but also on the basis of general Christian philanthropic principles.

The company's strategy <sup>199</sup>is not necessarily related to party politics.

The result was that he was caught between two sides of the fence. In the end, he was caught between two sides, and his socio-political ideas and attempts are only indirectly characteristic of the German conservatism of his time, i.e. through the reactions they provoked in the conservative camp.

The character of these reactions, and thus the true socio-political face of German conservatism at the time, becomes clear from the bitterness with which Huber reports the fate of his efforts. Among the conservatives, he writes, the "inhuman conditions of the day laborers" either do not become an "object of conscious thought or feeling" at all, or they appear "as quite ordinary and normal. Plans like his own, therefore, are "not suitable for the circles where the salvation of the world is seen in the doctrine of the absolute conservative power of large landed estates and abhors any violation of these articles of faith as revolutionary"<sup>200</sup>.

was, "we aroused ... Hateful Affects against the Higher Social Classes

<sup>195</sup> Herberger, Stellung, 48; Richthofen, Wandlungen, ff. 12

<sup>196</sup> Rooster, Revue, 200.

<sup>197</sup> Paulsen, Huber, ff. 32, 42ff. Huber explained that <sup>3</sup> he was under absolute royal power.

He reproached the Kreuzzeitung Party for having "in common with liberalism of all colors" in its opposition to royal power (Die Arbeiter, 29f.).

<sup>198</sup> Social Issues, V, v.

<sup>199</sup> S. esp. Sociale Fragen, III (Die innere Mission).

<sup>200</sup> Social Issues, I, f. 6, 14.

at all". Huber, of course, rejects it and reserves the right to speak<sup>201</sup> frankly about the "diseases" of all classes. This tone of all

The name of a senior teacher, sublime in his partisan passions, which the outsider Huber liked to use in his self-conceited missionary consciousness, must have annoyed the nobility and the conservatives in general. But there were also other, factually weightier reasons why his proposals caused their uneasiness: they touched the sore point of the nobility, in that they indirectly demonstrated partly its inability and partly its unwillingness to take the patriarchal promise at its word and to fulfill it. For Huber shares with the vast majority of conservatives the aversion to a solution of the

labor question by the state-both the "biroaucratic-monarchical" and the socialist-and<sup>202</sup> thinks that the main work in this field is

matter of free self-rescue"<sup>203</sup>. At the same time, however, he insists on the free and responsible activity of the upper classes (besides the self-help of the

A contradiction in the conservative behavior is that the "heat against bi-regulatory paternalism and self-government in general may well go hand in hand with a morbid aversion to any autonomous development and self-government.

tigkeits vertrag"<sup>204</sup>. An activity that is hidden behind the pretext of rejection.

Huber was all the less able to forgive the fact that he expected patriarchal selflessness from the nobility and regarded<sup>205</sup> it as the basic pillar of a reorganized aristocracy with the participation of the factory lords.

<Huber's own sociopolitical plans differed considerably from those of the actual conservatives. Huber also wanted to overcome atomization in the workforce, but advocates of the cooperative system, such as Schultze Delitzsch, seemed to him to be closer to this goal than the "goners and preachers of the guild and guild system. In agreement with his endorsement of the conservative

In addition to the "game with the deadly skeleton of the guild system," he stood up for the right of workers to freely choose<sup>207</sup> their place of residence and work. And finally

<sup>201</sup> Social Issues, VII, xii-xiii.

<sup>202</sup> Sociale Fragen, V, iv-v. On his polemics against Wagener and Lassalle, see Paulsen, Huber, 162ff., 172 ff. Incidentally, Huber considered attempts to harness Social Democracy to conservative goals to be completely absurd; he warned against, the false cunning ... as if these destructive forces could lend themselves to conservative exploitation" (Soc. Fragen, VII, v).

<sup>203</sup> Social issues, III, 29.

<sup>204</sup> The workers, 23f.

<sup>205</sup> Paulsen, Huber, f. 73.

<sup>206</sup> Social question n, VI, 15f.

<sup>207</sup> Workers, 24, 6.

Huber made himself completely impossible with the conservatives if he wanted to extend his social policy to <las land as well and turn the farm workers into prosperous tenants.<sup>208</sup>

The more social democracy grew and took the representation of workers' interests into its own hands, the more conservative social policy faded away and those who still wanted to remain social conservatives isolated or radicalized themselves. An extreme case of this radicalization and at the same time dissolution process can be found in Stoecker's Christian social movement, where the "boys," with Naumann at the forefront, lobbied vigorously for the interests of the proletariat and, in addition, made the unforgivable misstep of taking up the cause of the agricultural workers and demanding a division of landed property. Stoecker tried to tame the "boys," but at the same time he wanted to keep them in his movement; by getting into a dubious position, this basically highly conservative man drew the ire of the conservatives and was marginalized, while Naumann completely separated<sup>209</sup> himself from social conservatism. Other social conservatives radicalized their position by adopting rupture styles of the state socialist teachings of Rodbertus; in this case, too, however, nothing else resulted than a

growing alienation from politically organized conservatism.<sup>210</sup> The Although the conservative parties were willing to support the center's middle-class policy, which was aimed primarily at preserving small trade and crafts, they were reluctant to support worker protection, which was also an aspect of the center's social policy. But they were not the only ones to live with the fear of social democracy, for Catholic social policy also quickly adapted to capitalist reality, although patriarchal and corporate reminiscences continued to adorn the<sup>21</sup> Center's propaganda vocabulary.<sup>1</sup>

### 3. The asthetization and reinterpretation of conservative thought motifs in political Intellectual Movements

#### a. Outlook

The collapse of the classical conservative school of thought is noticeable in the fact that its two leitmotifs, namely the principle of the impracticability of law and the associated rejection of modern sovereignty, together with their immediate implications, are gradually being withdrawn from circulation, in that the institutions which sustain modern statehood in its various forms are asserting themselves across the board and leaving no doubt as to *how and when* law is made. Now, however, various theological, anthropological, social-theoretical, etc., extrapolations had in the meantime grown up around the aforementioned leitmotifs. These extrapolations have taken on a life of their own even after the dissolution of the core of the conservative worldview, and they have been linked to movements and ideas of considerably different inspiration.

tion have entered into fli cial or permanent liaisons, without their origins being known. would have been aware of. The major axis around which the scattered conservative motifs of thought now revolve is the critique of capitalism, especially the critique of culture. However, capitalism, its hautlichkeit and its Inhum ani tat, is no longer confronted with <las that which the conservatives fundamentally confronted it with, namely <las more or less clarified image of the socie tas civilis, but with ideals that originate mainly from the imaginary world of the post-Roman astheticizing intelligence of the 19th century: the beauty, the powerful energy, the inherently harmonious order, etc. The conservative thought, however, is no longer a critique of capitalism. Even if the pre-capi talist past continues to be glossed over with polemical intent, this is done from the point of view of the new asthetic (and moral) scale of values, without necessarily amounting to the legitimization of a particular traditional form of rule. On the basis of the aforementioned ideals soil now <las social life in its entirety be organized, i.e. *made*. In contrast to the priorities of classical conservatism, a strong voluntaristic element comes to the fore here, and with it the bearer of this fresh will to act: It is namely swarmed by the great personhood, but also by an elite that has to do with the old nobility only occasionally (and then again only externally), is rather composed of princes, industrialists or casars, clearly distinguishes itself from the masses and takes on the task of organizing their lives under the conditions of industrial society. The speculative ideal in its ancient Christian aristocratic form fades (although it lives on modified in the aesthetic) and the deity of homo faber and of the industrial age, namely labor, is worshipped state <lessen in various ways. Beyond that, the theistic meta-

<sup>208</sup> Social issues, I, (13, (11

<sup>209</sup> See the account by Heffter, Kreuzzeitung, 228ff, ff.246

<sup>210</sup> Rooster, Revue, 207.

<sup>211</sup> Richthofen , Transformations, ff26, (71

The physical background of classical conservatism - or rather, it is also aesthetized and transformed into a cosmic frame, into which the new ideals, from gentleness to heroism, are now figuratively projected; spiritualistic motifs, which often emerge strongly in the process, do not indicate adherence to the dogmatics of Christianity - which, by the way, is also aesthetized throughout - but rather express the opposition to capitalist utilitarianism and vulgar materialism.

This structure of thought is essentially new from the point of view of the history of ideas. Many of its components are not new, but they are characterized by aestheticism, voluntarism and elitism, and this changes their function to such an extent that it is hardly possible to speak of conservatism in the specific sense of the word. In its almost pan-European spread, this current was combined with smaller political intellectual movements, but its influence remained more intellectual than political. Anyone who wanted to define its political position more precisely would be ill-advised to define it as a "political movement."

It is inadmissible to apostrophize it as "conservative". For, apart from the fact that it contains elements that have also been abundantly used in "progressive" movements, it is inadmissible to confuse what was called "conservative" in the 19th century with what was called "progressive" in the twentieth century. It is inadmissible to confuse what was called "conservative" in the century with what is called "right-wing" in the 20th century. Right". This widespread confusion is the starting point of many accusations and also the source of many errors. Here, however, we want to avoid both.

### *b. English foreshore*

We know that intellectuals who put themselves at the service of the conservative cause also sought to assert their particular self-confidence as<sup>212</sup> intellectuals by placing the sage or the kinsder at the top of their ideal social models. At the same time that Coleridge was drafting his plan for a National Clerisy, he was complaining that the commercial and materialistic spirit in England had compromised respect for art.<sup>213</sup> Coleridge, as a political thinker, remained more or less within the framework of classical conservatism, but the intellectuals who disrupted it were also influenced and stimulated by similar experiences that were unpleasant for them. Carlyle was also not at all satisfied with<sup>214</sup> the situation of the genius and the poet in contemporary England. This is not a critical side note, but the existential starting point of his social theoretical reflections. For "the Man-of-Letters must be regarded as our

Carlyle's critique of zeal and capitalism,<sup>215</sup> which then leads to the elaboration of a social counterdraft, is based precisely on a certain idea of culture. In the eyes of the undeservedly disadvantaged man-of-letters, the greatest defect of capitalist society is that culture does not encompass the social in its entirety (which would give the literary man or the kinsman an unhindered space for development), but represents<sup>216</sup> a special occupation and a separate sphere among others. Carlyle's idea of culture now has both an artistic and a religious component, but this does not imply a split or a contradiction, since here <las religiosis no less than <las Kiinsderis che is under the sign of the ashetical<sup>217</sup>. In Carlyle's work, the modernist artist does not defend himself against the medieval priest, but religion is transformed into a reliable ally of art in the current struggle against capitalist unculture through its aesthetization. Both, art and aesthetized religion, corporealize <the>higher, fine, spiritual, eternal in its contrast to the vulgarity, shallow profanity and transitoriness of material values and the materialist mindset of the present; In particular, religion does not refer to specific dogmas and rituals, but it is the attitude of the spirit fed from heavenly sources, which refuses to be killed<sup>218</sup> by the desire for profit and other capitalistic siinds. Like the classical exponents of conservatism, Carlyle understands the new age as a disengagement from God, who has been reduced to a "clockmaker," with Eudamionist doctrines replacing his commandments<sup>219</sup>; from the idealized Christian past he likewise draws the mythical scilizations and figures (such as the Ancient Monk) he needs to illustrate his positive scale of values. Although the aestheticization and thus secularization of Christianity weighs heavier here in terms of geisces history than the cultivation of Christian motifs per se, it must be noted on the other hand that the paganism that will characterize related schools of thought around 1900 is still largely absent in Carlyle's work.

What, then, are the features that make capitalism so abhorrent? Carlyle takes exception to the fact that, despite the increase of the . wealth is widening the gap between rich and poor, and raises the demand

<sup>215</sup> On Heroes, V = Works, V, 155.

<sup>216</sup> Williams, Culture, 97.

<sup>217</sup> Cf. the equation of Fine Arts and Religion in Coleridge, Statesman's Manual, I, App. C = Coll. Works, VI, 62. see also Carlyle, Shooting Niagara, Works, XXX, 25: "the genuine Art is... a higher synonym for God Almighty's Facts."

<sup>218</sup> Cf. Roe, Social Philosophy, 63ff.; Lippincott, Victorian Critics, 10f., 31f.

<sup>219</sup> Past and Present, III, u1. = 2 Works, X, f136., f.147

<sup>212</sup> See above chap. III, sect. 8.

<sup>213</sup> Talk, = 7.7.1831 S. 122.

<sup>214</sup> See, for example, Past and Present, II, = 9 Works, X, 86.



for the elimination of exploitation and for justice.<sup>220</sup> His deepest interest, however, in all emphatic formulations, is not in this aspect, but rather in the anthropological and cultural consequences of the material pursuit of profit and the transformation of all values into money. In capitalist society there is "the terror of not-succeeding; of not making money, fame, or some other figure in the world - chiefly of not making money. . We have profoundly forgotten everywhere that cash-payment is not the sole relation of human beings"<sup>221</sup> Deification of money and death of the soul: this is for Carlyle the essence and at the same time the most horrible crime of capitalism. But a system that brings about such things cannot exist merely in the economic sphere; it forms an extensive and complex phenomenon that leaves its mark on an entire historical epoch. Carlyle defines the present as the

The "mechanical age", by which he means not only the replacement of traditional simple tools by modern machinery and not only the capitalist mode of production, but a "mighty change in our whole manner of existence". The mechanical of the new way of existence appears on different levels and in different ways. The exact natural sciences and their "mechanical metaphysics" suppress religion and art, scientific work is organized on a collective basis and the individual genius is thus silenced, political parties and all kinds of societies set up. Finally, the whole institutional network is regulated<sup>222</sup> according to mechanical criteria of equilibrium. The sad and perverse result of this all-round imposition of the mechanical is a disembodied world populated by soulless people.

The historical inferiority of the Mechanical Age can be established by looking back to the past, which confirms that the greatest and most beautiful things in history were<sup>223</sup> achieved not on the basis of mechanical principles, but rather thanks to the dynamic development of human forces and the will to realize moral and aesthetic values. The dissolution of classical conservatism, however, is reflected in the fact that Carlyle, despite occasional idealization of the past, does not think for a moment of a return to it. Quite the contrary. His plans and expectations are directed forward, he wants a downright transformation of the world or the creation of a thoroughly new world; preservation - let alone restoration - is by no means declared to be the main task, and thus the specifically conservative perspective is abandoned: "There must be a new world, if there is to be any

<sup>220</sup> A. op. cit., I, = 2 Works, X, 6, 13, 18. S. already Signs of Time (1829) = Works, XXVII, 60.<sup>2</sup>

<sup>221</sup> Past and Present, III, = 2 Works, X, 146.

<sup>222</sup> S. Signs of Time, Works, XX VII, esp. 59-68.

<sup>223</sup> A. a. ff. 0., 70

world at all! That human things in our Europe can ever return to the old sorry routine, and proceed with any steadiness or continuance there; this small hope is not now a tenable one. These days of universal death must be days of universal new birth, if the ruin is not to be total and final!"<sup>224</sup> The dislocation of the world must be achieved by the reactivation of what Carlyle already found. The transformation of the world must be achieved by reactivating what Carlyle had already called the "dynamic nature of man" and by dynamic science, which drives and directs<sup>225</sup> "the primary, unmodified forces and energies of man, the mysterious springs of Love, and Fear, and Wonder, of Enthusiasm, Poetry, Religion". Carlyle, however - and this makes clear anew the decisive difference from classical conservatism - does not treat the problem of seduction against an ahistorical anthropological background, as it were, but as it arises under the conditions of the industrial working society. He even affirms this society and its supreme law, work, and thinks that also here man can accomplish great things, even here God can show his face: Our Epic having now become Tools and the Man, it is more than usually impossible to prophesy the Future. The boundless future does lie there, predestined, nay already extant though unseen ... the united intelligence and effort of All Men in all coming generations, this alone will gradually prefigure it, and figure and form it into a seen fact! ". Although the future cannot be envisioned in detail, two things are certain: "that a Splendour of God, in one form or another, will have to unfold itself from the heart of these our Industrial Ages too" and "that there will be again a King in Israel; a System of Order and Government"<sup>226</sup>. Carlyle is convinced that labor can be understood and operated in a dynamic sense, so that "the industrial system of Mammon's tool can be transformed into God's service. „God-like Labour" and "brutal Mammonism" do not coincide, on the contrary: "Giant Labour, truest emblem there is of God the World-Maker, Demiurgus, and Eternal Maker; noble Labour, which is yet to be the King of this Earth"<sup>227</sup>. Carlyle now solemnly bids farewell to the ancient and Christian ideal of the *vita speculativa* as the highest human perfection, to which classical conservatism still paid homage: "there is a perennial nobleness, and even sacredness, in Work in ... Idleness alone is there perpetual despair. Work is in... communication with Nature a ... man perfects himself by working". „Labor is Life: from the

<sup>224</sup> The Present Time (1850) = Works, XX, 2. Elsewhere it reads: The State will.. have to alter very much, to alter, I think, from top to bottom, if it means to continue existing in the times that are now coming and coming," see Downing Street (1850) = Works, XX, 98f.

<sup>225</sup> Signs of Time, Works, XXVII, 70, 68.

<sup>226</sup> Past and Present, VI, = 1 Works, X249, , 250.

<sup>227</sup> A. a. III, 0., = 7 Works, X, 169f Cf. III, = 12X, 207: Industrial work, still under bondage to Mammon, the rational soul of it not yet awakened "....

inmost heart of the Worker rises his god-given Force, the sacred celestial Life essence breathed into him by Almighty God"<sup>228</sup>.

On the basis of the affirmation of the industrial working society, it is now examined how the new elite or aristocracy, which has to lead this society, can be formed. The inner democratic tendency of capitalism and its present preponderance are certain for Carlyle<sup>229</sup>, but he is equally certain that democratic equality cannot be reconciled with the hierarchical structure and the lawfulness of the world. But if the masses are the natural bearers of democracy, and if democracy means the reduction of all human relations to "cash payment," then the degeneration of society can be countered in only one way: "the few wise will have . . . to take command of the innumerable Foolish"<sup>230</sup>. The big question now is what the inevitable aristocracy will look like within an equally inevitable industrial, working-class society, i.e., to what extent it will or will not resemble the aristocratic upper class of the past. Carlyle answers this question by distinguishing between "working" and "idle" aristocracy and then giving preference to the former. Even before cash payment became the only "nexus of man to man," the old upper class was satisfactorily performing its duties as rulers, but the changed times demanded a new aristocracy. Although Carlyle must defend the old aristocracy against democracy, he also relentlessly portrays its weaknesses (as well as those of the clergy) and shows how it allowed itself to<sup>231</sup> become entangled in the game of capitalism. This state of affairs, however, obviously did not occur only after 1832, since Carlyle writes in 1839 that for a century Parliament had been concerned exclusively with itself and the material interests of its members<sup>232</sup>. It was already corrupt and ineffective in<sup>233</sup> the eighteenth century, and it remained so: Parliament has a "Bribery Committee" and a "Parliamentary Committee.

no-good assembly of "eight hundred Parliamentary Talkers"<sup>234, 4</sup>

Again  
st

This Parliament, <whose quality is deteriorating as a result of democratization and freedom of the press,> Carlyle proposes a strengthening of the Crown in order to deprive it of sovereignty<sup>235</sup>; in doing so, of course, he ties in with<sup>236</sup> ideas of Young England.

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<sup>228</sup> A. a.0 . III, = 11Works, X, 196, Cf.197. III, = 15X, 232£ „Praying by Working, Work is Worship".

<sup>229</sup> See, for example, Shooting Niagara (1867) = Works, XXX , ff.1

<sup>230</sup> The Present Time, Works, XX21,24, , 34.

<sup>231</sup> Charcism (1839), VI = Works, XXX, f162, ff.155

<sup>232</sup> A. a. 0.,167.

<sup>233</sup> Downing Street (1850) = Works, XX, ff., f.98108,110

<sup>234</sup> Past and Present, IV, 2-3 = Works, X, ff., 252259.

<sup>235</sup> Parliaments (1850) = Works, XX , f225,223; cf. Downing Street, in the same volume, 121.

<sup>236</sup> See above, section b1 of this chapter.

Nevertheless, here too Carlyle's position differs from that of his conservative compatriots, since he sees the strengthening of the crown not as a panacea but as a preliminary stitze on the road to radical reform, which is his true and only goal. The power of the crown does not mean much without an aristocracy capable of ruling and governing, and it is on the formation of the aristocracy that Carlyle is concerned. While he fundamentally affirms the industrial, working society, he is guided by the insight that the "organization of labor ... the universally vital problem of the world"<sup>237</sup>; in view of the observed decadence of the landowning "idle aristocracy," however, the solution of this central problem can be tackled only by those "who practically stand in the middle of it. The "leaders of industry" must become "captains of the world," and if they do not succeed in delivering an aristocracy on a par with the demands of the times and putting an end to the diabolical chaos, then a second French Revolution, or even a series of revolutions, cannot be avoided until nature has<sup>238</sup> imposed her order. It is true that the "work ing aristocracy" is currently a mammon client, but on the other hand it is said to be "realistic and capable of,, reforming itself". Either way, for coping with the great tasks of the present age, time-honored titles of nobility are not enough; only natural selection can help here, since

Natu re, a far juster sovereign, has far cerribler forceps". But if the new aristocracy is to overcome its own capitalist character and capitalist society altogether, it will need, for all its lack of nobility, chivalrous virtues, above all selflessness and fearlessness; A new type of human soil must emerge, characterized by patience, perseverance, courage and enlightenment, and the bearer of a heroic ideal of life ("man is created to fight; he is perhaps best of all definable as a born soldier"), as well as the living reference point of the hero cult as the basic moral pillar of society. will<sup>239</sup> hand over the company.

This new "Aristocracy by Nature, who derive their patent of nobility directly from Almighty God"<sup>240</sup> turns to the chivalrous and heroic by recognizing that supply and demand are by no means natural law and that "cash payment" is<sup>241</sup> by no means "the sole nexus of man with man". The defense and propagation of higher ideals is, along with the organization of the world of work, the second major task of the aristocracy, which is "a Governing Class and a Teaching Class".

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<sup>237</sup> Present Time, Works, XX, 36.

<sup>238</sup> Past and Present, IV, =4 Works, X, f270,271 , (273

<sup>39</sup> A. a. 0. , III, 8,10,11u. IV, =4 Works, X, ff177, 198, 190,(286

<sup>240</sup> Shooting Niagara, Works, XXX, 21.

<sup>241</sup> Past and Present, III, = 9Works, X, 186.

Class" must be<sup>242</sup> at the same time: the task of bringing out the great art.

which, together with religion, is to educate the people<sup>243</sup>. Thus, the inclusion of the artist in the new natural aristocracy, which was envisioned and desired from the beginning, will be realized. The artist or the man of letters emp finds that his only chance to reach the top of the social hierarchy consists in the assertion of the modern elite thought against the old conservative class thinking. He is therefore anti-democratic, i.e. anti-egalitarian, but he cannot be a conservative in the specific sense if he is not prepared to give up the freedom and at the same time the priestly claim and habitus, which he first acquired within capitalist society, in order to become anew a court poet or court jester. This is the deepest psychological and sociological reason why intellectual movements that paved the way for the right of the century<sup>20</sup>. could not actually be continuations of classical conservatism.

No less significant for Ruskin's social philosophy and **utopia** were the concerns about the present status and the reflections on the future tasks of the artist. For from the concrete point of view of the power needs of the artist or the man of letters, the question of the meaningful organization of the community can be formulated as follows: what *must* society *be* like in order to provide an ideal huge audience? In abstract-general form, the same question is: in what kind of society can art and beauty flourish for the benefit of the general public? Posed in this way, the question presupposes that there is a necessary connection between art and society, i.e. that art is as much a social phenomenon as society ideally is a work of art. But the question also implies that art criticism and social criticism are two sides of the same coin, since they both take their starting point from the aesthetic. Art cannot develop in the coarse and materialistic capitalist world, so the need for artistic creation in the full sense of the word *must* call forth the rebellion against that world and the demand for a new one. And further: if beauty consists in the spiritual or in the spiritualization of the sensual as well as in harmony and order, then the new beautiful world must put the spirit at the top and be based on an ordered hierarchy. Following Plato freely, but sensuously, Ruskin therefore combines a spiritualistic-anti-materialistic inclination with the cult of gentleness and with the ideal of a hierarchical and anti-democratic social order<sup>244</sup>.

<sup>242</sup> A. a. O., IV, = 1 Works, X, 241.

<sup>243</sup> Shooting Niagara, Works, **X X X**, ff. 23

<sup>244</sup> On these motifs in Ruskin's thought, see especially Roe, Social Philosophy, 149ff; Lippincott, Victorian Critics, esp. 56, 60, 62, 67 f; Barker, Political Thought, 166, 168, 173; Williams, Culture, f141

By linking art with religion and morality, the artist's claim to power becomes total, since he now puts himself in a position to administer, as such and ex professo, all the relevant spheres of social ideology. As for Carlyle, so for Ruskin, the fine arts must have a noble motive, and in his view they were only great if they had something beyond the

Gods wanted to teach<sup>245</sup>; religion was "the life of art"<sup>246</sup>. With equal emphasis

it is claimed that an essential function of art <sup>247</sup>is the perfection of the "moral state. Precisely because art, religion and morality are

If capitalism is mentioned, felt, and cultivated in the same breath, the criticism of its ugliness and disorder immediately turns into a critique of the obscure moral effects of its profane materialist worldview. In describing the capitalist way of thinking, Ruskin can think of no worse reproach than that a cotton mill is ranked higher than a

Paintings by Titian<sup>248</sup>. Due to its image of man, the

capitalist national economy and politics no chivalrous virtues, no austerity moral and no good education<sup>249</sup>. Accordingly, the ruling

Capitalists - "the guilty Thieves of Europe, the real sources of all deadly war in it", those who have only<sup>250</sup> piled up disasters and never fulfilled the educational task of a worthy upper class. The real wealth -

i.e. God and the divine law, beautiful and healthy bodies and souls, good and pleasurable things in general - are under these circumstances depreciated for the sake of empty pomp and luxury.

Wealth therefore consists "of things suited to the capacity of harlots and their keepers"<sup>251</sup>. And, on top of that, an economic activity that is based on

The artist, however, is not convinced that the "imaginary necessities and popular desires, in order to gather its temporary profit from the supply of them," will finally be guided by the profit motive, regardless of the waste of time and material<sup>252</sup>. Ruskin is also concerned about the

moral consequences of the introduction of machinery, especially in agriculture<sup>253</sup>.

Does the moral degeneracy under capitalism arise from the subjugation

<sup>245</sup> s Sesame and Lilies, III = Works, XVIII, 153.

<sup>246</sup> Notes . . . (1877) = Works, XXII, 508.

<sup>247</sup> Lectures on Art, II-III = Works, XX46,, 47, 73.

<sup>248</sup> Fors Clavigera, = 7 Works, XXVII, .128

<sup>249</sup> A. a. = 0., 45 Works, XXVIII, ff. 158

<sup>250</sup> A. a. u0., 2. = 7 Works, XXVII, ff. 39 f. 126

<sup>251</sup> A. a. = 0., 70 Works, XXVIII, f. 19, 716.

<sup>252</sup> Time and Tide, XV = Works, XVII, 389.

<sup>253</sup> Fors Clavigera, 5, u17. 37, 44, 58 = Works, XXVII, ff. 85, 298 ff u. XXVIII, 21, 133, f, 137423.

If the aesthetic and the ethical are subordinated to the economic, Ruskin now envisions a reversal of this unacceptable relationship and a restoration of the true hierarchy of values. And since he regards liberal political economy as the core and epitome of capitalist thought in general, he also thinks that he can achieve this restoration by confronting the economic orthodoxy of his time. The details of the economic theories he constructs in<sup>25</sup> the process are not discussed here and have been rightly forgotten in the meantime. What has lived on, however, in various right-wing and left-wing versions, is his demand that economic gr:bles be understood in terms of their dependence on interpersonal social relations. Liberal political economy, according to Ruskin, is based on principles that are in stark contradiction with those of the Christian religion<sup>255</sup>, and, moreover, it attempts to underpin these principles with an anthropology that revolves unilaterally around the alleged constant of self-interest, while it is ignorant of social affections. Its subject matter is correspondingly shaped: it deals with the production and distribution of goods and their concentration in a few hands, so that it is not really political, but rather

mercantile economy should be<sup>25</sup> called -<sup>6</sup> The role of money in capitalism laflt The result is a fictitious image of the economy and of wealth, because it loses sight of<sup>257</sup> the basic factors of economic activity, i.e., land, natural resources, and labor. By eliminating the nationalist fictions and returning to the elementary conditions of the production of wealth, Ruskin wants to regain the level at which human relations become transparent again in their determining influence on the shape of the economy. But if the grids of political economy are functions of interpersonal relations, then the ultimate goals of economic activity can be defined on the basis of the conscious goals of the economic agents. Thus, it finally depends on what people themselves want to achieve. For Ruskin there can be no doubt about this: The aim of economic activity, as of any other, is "the multiplication of human life into the highest standard," i.e., the production of all that the body, soul, and spirit of the perfect type of man require<sup>258</sup>. The only true wealth is life itself, "including all its powers of love, of joy and of admiration"; this life is what consumption is meant to serve, and production is meant to

<sup>254</sup> See especially *Munera pulveris*, Works, XVII, 129/183.

<sup>255</sup> „Unto this Last," Works, XVII, f75.

<sup>256</sup> op. cit., 25ff, 44f

<sup>257</sup> *Fors Clavigera*, = 1,2,16Works, XXVII, 23(, 34-38, 286.

<sup>258</sup> *Munera pulveris*, §§ 7-8 = Works, XVII, 150.

in turn in the service of this consumption. The decisive question for a nation, therefore, is not how much labor is employed, but how much life is produced in the process; for the richest nation is that which can embody<sup>259</sup> the greatest number of noble and glorious men. Hence genuine wealth is <1 characterized by its moral character, which iibrigens is the only one capable of<sup>260</sup> justifying and securing the social domination of the rich. To be rich, then, is an office, and the rich man or employer, renouncing his own selfish interests, performs his work just as a priest or a soldier does. The<sup>261</sup> worker receives from him a just wage, i.e. he receives as much working time and strength as he himself has given<sup>262</sup>, and in place of acquisitiveness and competition come grace, generosity, joy and harmony<sup>263</sup>.

What form of society will result from the reversal of the prevailing unnatural relationship between economy and ethics or aesthetics? Or rather: which form of society is capable of realizing this reversal? Ruskin does not doubt the reprehensibility of the existing social order, so he can no more imagine a conservative than a liberal.

because the conservative "wishes to keep things as they are; and he is opposed to a Destructive ... or to an Innovator. Ruskin, however, meant to be<sup>264</sup> both a destroyer (he would destroy New York, for example, for aesthetic reasons) and an innovator. The progress of capitalism has in the meantime created such a situation that the counter-revolutionary and anti-democratic attitude can no longer be identical with the rejection of doing. Ruskin, like Carlyle, does not think of a return to the feminine past, but he incorporates essential elements of the post-revolutionary situation into his social design. He remains, however, somewhat more reticent and ambiguous than Carlyle. Like Carlyle, Ruskin takes a final departure from the ancient Christian speculative ideal and accepts that a modern society must be a thoroughly working society - indeed that work can mean not misery and curse, but joy and fulfillment. However, he limits this essential concession to capitalist modernity in two ways. On the one hand, because of his aversion to machinery and industry, he wants to give priority to handicrafts over industrial work<sup>265</sup>; and on the other hand, he has in mind the idea that work is not a curse but a joy.

<sup>259</sup> *Unto this Last*, "Works, XVII, 104(

<sup>260</sup> A. a. ff0.,52

<sup>261</sup> A. a. 0., (40

<sup>262</sup> A. a. 0.,64.

<sup>263</sup> *Munera Pulveris*, esp. §§98 ff = Works, X VII, 219ff

<sup>264</sup> *Fors Clavigera*, = 1Works, XXVII, 14(

<sup>265</sup> *Roe*, Social Philosophy, 233 ff.218,



The artist envisaged<sup>266</sup> a close connection of "arts with crafts", which would remove any trace of vulgarity from the work. Art and life merged on all possible levels, everything that was made of wood, stone, metal or clay was at the same time a work of art, artists would produce houses and clothes just as the farmer produces food: "for a true artist is only a beautiful develop ment of a tailor or carpenter"<sup>26.7</sup>

Ruskin is as convinced as Carlyle of the inability of democracy to produce good government; even with the introduction of universal suffrage, he thinks, at least suffrage should not be<sup>268</sup> equal. His sympathy is with a hierarchical patriarchal regime in which the rungs of the social ladder would<sup>269</sup> functionally complement each other. This paternal authority, which treats the subjects as sons, must in turn, as Ruskin writes in memory of the legal conception of the *societas civilis*, carry out the will of the divine authority, otherwise it becomes tyranny<sup>270</sup>. However, the rich will rule over the poor, but in contrast to the current capitalist practice, the rich will only make profits in order to give them to the poor, who could not make good use of these profits on their own, by means of various benefits<sup>271</sup>. After all, according to Ruskin, hierarchical patriarchalism can establish a stable and long-lasting state under God's eternal law - "state" means "the standing and stability".

of a thing": an immobilism in sparseness and harmony thus-<sup>272</sup> Carlyle had Ruskin's concept of hierarchical patriarchalism in itself would not be much objected to, although he might have imagined the details differently; but he, who believed in the still open possibilities of a great historical future, would hardly be able to endorse Ruskin's immobilistic ideal or accept it only as a distant prospect. For he affirmed the dynamic element of modern development par excellence, namely industry, while Ruskin's confidence in it was unconquerable, which also had certain consequences for the character of the ruling upper class in his social design. Land, the "healthy-giving land," remained in his eyes - in marked contrast to the optimism of industrial progress - the irreplaceable resource.

<sup>266</sup> Cambridge Inaugural Address (1858), Works, XVI, ff.177

<sup>267</sup> Time and Tide, XXI = Works, XVII, 426; Fors Clavigera, =11 Works, XXVII, 186 (cf. XXVIII, (440)).

<sup>268</sup> Munera Pulveris, § = 129 Works, XVII, (253

<sup>269</sup> See, e.g., Time and Tide, XIII-XIV = Works, XVII, 377-387. cf. Roe, Social Philosophy, ff.204

<sup>270</sup> A Joy for Ever, Works, XVI, 25,105.

<sup>271</sup> Munera Pulveris, § = 146 Works, XVII, 269.

<sup>272</sup> Sesame and Lilies, II = Works, XVIII, 110.

In addition, he considered the higher ethical education of a nation to be "irreconcilably inconsistent with filthy and mechanical employments," so that in the ideal state not only the realm of the mind but also agriculture would be reserved for the "upper classes," while the "mechanical arts" would be<sup>274</sup> practiced by the less gifted.

If the aversion to industry makes the landed aristocracy the ruling class, on the other hand, the irrevocable change of times is shown by the fact that this landed aristocracy is not conceived on the basis of the old idea of class, but rather as an elite in the modern sense. It is not birthrights that are decisive here, but rather the participation of the individual in the upper class that determines "some<sup>275</sup> kind of worth. The equitable integration of the individual into the state is based on the principle that everyone should be helped to develop the aptitudes and abilities that he actually possesses.<sup>276</sup> Moreover, the landowning aristocracy will be a working aristocracy, and the state will distribute the land to those who are worthy of it; The state distributes the land to those who have "proved capacities" to cultivate it, and who<sup>277</sup> can cultivate their land even better than their own workers. The aesthetic does not only come into its own because the utopian social project as a whole is not possible due to asymmetry.

criteria, but just as much by the fact that, in this decision

In Ruskin's view, the aesthetic-artistic activity is at the top of the social hierarchy. In comparison to the artist, the warrior comes off<sup>278</sup> somewhat badly in Ruskin, and this points to a further difference to Carlyle, who paid much more homage to a heroic ideal of life. In this respect, of course, the later European right followed Carlyle.

### c. Action Francaise

The world of thought of Action Française is undoubtedly shaped under the influence of currents that permeate the intellectual life of France during the second half and especially during the last third of the nineteenth century, but - and this remains decisive - the precursors are received selectively. A

<sup>273</sup> Fors Clavigera, = 73 Works, XXIX, 14ff. (Cf. 410).

<sup>274</sup> Munera Pulveris, §§ 108-109 = Works, X VII, ff.233

<sup>275</sup> Time and Tide, XXII = Works, X VII, 431.

<sup>276</sup> Fors Clavigera, = 9 Works, XXVII, 147, 153.

<sup>277</sup> Time and Tide, XXIII = Works, XVII, 438- 440; Fors clavigera, 22, Works, XXVII 58, u381. XXVIII, 424.

<sup>278</sup> Time and Tide, IV = Works, XVII, ff.30

Action Française is not a straightforward continuation of classical French conservatism, if only because the latter was dead and buried by 1848 at the latest. Comte's Catholic-influenced idea of order no longer has a specifically conservative sense, and the longing that Taine or Renan sometimes feel for certain aspects of the traditional ordering function of the church or even of the ancien régime and the monarchy are only symptoms that reflect the attitude of old liberalism in the face of the rise of mass democracy and of socialism characterize<sup>279</sup>. The Action Française shared the fear of the altlibe<sup>280</sup>. The ideology of Action Française is also linked to thinkers such as Fustel de Coulanges, who, without developing a political theory, became a defender of democracy, a defender of the aristocracy and, above all, a praiser of the family and tradition, a defender of tradition and, above all, a praiser of the family: it is also associated with thinkers such as Fustel de Coulanges, who, without developing a political theory, became an indicator of democracy, defender of the aristocracy, and above all a praiser of family, tradition, and the French past, or - vie! more directly, La Tour du Pin, the royalist and anti-liberal advocate of a corporate social order; at the same time, it was influenced by the regionalist tendencies that emerged in the last decades of the nineteenth century against the republican and parliamentary, but at the same time centralist, French system of government.

State have turned<sup>281</sup>. - Nevertheless, the spinning up of forerunners and the Reconstruction of insights to explain crucial features of the ideology of Action Française (or, what is practically the same thing, of Maurras' thought) cannot be done if we do not take into account the basic motifs that have served us as a key to understanding the socio-political thought of Carlyle and Ruskin. As has been rightly pointed out for some time, the Action Française is, after all, a literary and social affair. remained<sup>282</sup>, and therefore their world of thoughts is just as much under the sign of the

Motifs that are fundamental to the political intellectual movements as such. The above-mentioned insights also revolve around and structure these motifs. As a representative of a political intellectual movement, Maurras develops a social model that is twofold in the view of the modern intellectual: it is the idealized opposite of the intellectual's aversions and arises because the intellectual feels threatened in his social status and in his self-understanding by the actual development of society. Logically and psychologically, Maurras starts from the opposition of mind vs. money or ethos vs. money,

This is the concrete situation of the intellectual, who, as a representative of higher values, defends himself against the corrupting influence of a vulgar materialistic society and aggressively wants to assert his identity in it. There is a gulf between him and the ruling plutocracy: „La reputation de l'écrivain est perdue.... Journalistes, poètes, romanciers, gens de théâtre font un monde où l'on vit entre soi, mais c'est un enfer. Les hautes classes se montrent froides envers la supériorité de l'esprit" <sup>283</sup>. But not only the plutocrats lose due to their capitalistic valuations any interest for the spirit and the intellectuals; the intelligentsia, too, becomes entangled in the dark game of machinations in the field of the culture industry, and since its material means are far from being able to keep up with the competition of the great finances, it succumbs and even finally becomes an ancilla plutocratiae, which, while seemingly directing public opinion, is in fact directed in its turn and deceives<sup>284</sup> the broad masses for the sake of capitalists without a fatherland or even of foreign powers. The social situation and the moral degradation of the intelligentsia seem all the more intolerable, since it alone and just now has a unique task, "une faculté surhumaine, le don féerique de décider ou de déterminer une belle chose": it is to decide the battle between money and the sword, and then, "devenue le génie sauveur de la cité, l'Intelligence se sera sauvée elle-même de l'abîme où descend notre art de considérer"<sup>285</sup>. Maurras, of course, just as little as Carlyle or Ruskin, does not want to go so far as to make the government of the infinitely healthy society of the Intelligence in corpore directly. On the dictatorial state of supremacy In the context of the "hierarchy naturelle de la nation", however, it will not be at the formal top, even if its very high position "dans l'échelle des valeurs morales" will<sup>286</sup> amply compensate it for this.

In Maurras' eyes, the social degradation of the intellectual goes hand in hand with the decadence of culture, with bad taste and the vulgarity of manners.

is accompanied by<sup>287</sup>. This cultural critique, in turn, is directly related to the critique of parliamentarism and democracy together, since the force that dripping on the Intellektuel also dominates the parliamentary democracy as a whole: „c'est l'Argent qui fait le pouvoir en démocratie"<sup>288</sup>. But the effect of money is secret, impersonal, egalitarian, disintegrating, and the functioning of democracy and parliamentarism is correspondingly: the backdrop, the invisible influence, the selfish and partisan attitude reigns, and this in turn leads to the dissolution of every stable force and every firm belief.

<sup>283</sup> Ro mantisme , A. 81.284a. 58 ff. 0.,<sup>285</sup> A. a. A0.,33,34.,286 .0.,86 <sup>287</sup> A. a. f0.,29 <sup>288</sup> Mes Idées, 161.

<sup>279</sup> Roche, Idées, ff69

<sup>280</sup> Remand, Droite, 173ff

<sup>281</sup> On these thinkers and tendencies, see Roche, Idées, ff, f83105,110 ff.

<sup>282</sup> Gurian, Integraler Nationalismus, 73.

In short, democracy corrupts anarchy and lives anarchically, almost randomly, without a respectable and responsible sovereign, without real Representation and authority<sup>289</sup>. The atomization and amorphousness can therefore be

This cannot be eliminated without the elimination of democracy itself, because it results from the democratic principle of equality: if organization and organized order presuppose a certain differentiation and hierarchization, then egalitarianism *must* infallibly lead<sup>290</sup> to disorder, to dissolution and finally to the death of the social body. Not the opposite, but a confirmation of democratic disorder is the monstrous process of centralization demanded by the functional mode of parliamentarism. Ministers and deputies bind their electors to themselves through officials whom they themselves have hired; a layer of middlemen and parasites emerges, which lives off the state and participates in the

The government has a<sup>291</sup> direct interest in the expansion of the state apparatus. The democratic

Centralization, in turn, entails two consequences, which, according to Maurras, only seem to contradict each other. On the one hand, centralization, i.e., growing bureaucratization and depersonalization, leads to a decrease in the number of employees.

The power of money, as the anonymous power that it is, makes it easier to influence or control anonymous entities<sup>292</sup>. And

On the other hand, the expansion of the state means a strengthening of the egalitarian tendencies inherent in centralized bureaucracy, which eventually spread to the social sphere and lead to socialism:

„le socialisme d'Etat sort du coeur et des entrailles de la democratie ... l'egalite democratique, deja realisee clans l'Etat, se poursuivra clans la societe La ...democratie politique fait la democratie sociale"<sup>293</sup>. In this sense, too, following the representatives of classic conservatism, the origin of the egalitarian democracy from liberalism can be<sup>294</sup> asserted.

The confusion and the dangers of democratic disorder are now contrasted with an ideal of order. In its solidity, it will first of all represent the antithesis of the unpredictable mobility of liberal-democratic progress; secondly, it will relieve the cultivated individual, Maurras, for example, of the uncertainty and fear he feels in the face of the rampant danger of the darkness of the world. and barbarism<sup>295</sup>. By its nature, therefore, is rooted

This ideal of order is more aesthetic-literary than political; it primarily reflects the rejection of the aesthete, who had grown up in the classical conception of beauty, of the democratic lack of culture.

and anarchy; the analysis of disorder and havoc in culture paves the way<sup>296</sup> for the critical analysis of democratic, partly anarchic and partly tyrannical politics. This transference of the aesthetic criteria to the

However, the consideration of the political, so that the postulate and the demand for order in the political results from it, becomes possible only on the basis of the premise that beauty is itself order, hierarchy, and harmony. Maurras's basic aesthetic decision against Romanticism and in favor of Classicism thus acquires a direct political relevance. As he argues, there is a striking analogy between the freedoms that the classical understanding of art grants to the artist and the freedoms granted or denied by classical politics<sup>297</sup>. Artistic creation and political activity should, in other words, be subject to certain rules and a certain conception of order; like true art, true politics remains strict and disciplined at all times, in order to find its grace in strictness and its freedom in discipline. In contrast, romanticism is the aesthetic expression of revolution, just as revolution can be seen as the political expression of romanticism. Both of them do not recognize any given objective rules and no individual instances, they allow the individuality to be preserved and equate freedom with personal will, but without being able to put this ideal of freedom into practice: for the individual cannot create the world *ex nihilo* according to his own will, but he has to make himself available anyway.

objective conditions consciously or unconsciously<sup>298</sup>. Moreover, according to Maurras, the romantic and revolutionary spirit was an outgrowth of the national enemy, Protestant Germany, and was introduced into France as a foreign body by Rousseau in order to destroy the classical synthesis, as it had developed for the second time in the French ancien regime, especially under Louis XIV.

The Romantic enemies of the Revolution, such as Chateaubriand, had in fact served<sup>299</sup> the Revolution. The

classical policy of the ancien regime, which followed the "precede logique" and The "precede intuitif" of the animals and the barbarians finds its contemporary continuation in Catholicism as well as in thinkers like Comte, who let themselves be influenced by the Catholic idea of order. Maurras demands a union of Catholic theologians and atheistic positivists against "l'esprit de l'anarchie mystique,"<sup>300</sup> and in this way he reveals how alien classical conservatism is to him. For he not only rejects <lessen fundamentally anti-intellectualistic epistemology and anthropology, he does not connect

<sup>296</sup> Cf. Weber, *Action Française*, 77.9,

<sup>297</sup> *Romantisme*, 18.

<sup>298</sup> A. a. O., 12ff

<sup>299</sup> A. a. O., 4ff, 245f

<sup>300</sup> A. a. O., 270, 11288.

<sup>289</sup> A. a. O., 169f, 174ff; Enquete, 14ff

<sup>290</sup> Enquete, 117, 119: „La democratie, c'est le mal. La democratie, c'est la mort".

<sup>291</sup> A. a. O., 28, 218; *Mes Idées*, ff. 178

<sup>292</sup> *Romantisme*, 77.

<sup>293</sup> *Mes Idées*, 202ff

<sup>294</sup> A. a. O., 147ff

<sup>295</sup> Gurian, *Intégr. National.*, (22; cf. Nolte, *Faschismus*, 143.

The paganist perspective of ancien régime and classical antiquity, but also a pre-scientific conception of order mixed with a conception of the laws and order of nature, which only came to be known as the "natural order".

<l> came into the world through the positivist scientism of the century.<sup>19</sup>.

The atheist and paganist Maurras also abandons other central tenets of classical conservatism, such as the unity of ethics and politics or of the private and public spheres,<sup>130</sup> but even when he professes conservative principles, he does not succeed in giving them their traditional meaning. Thus, he wants to base<sup>302</sup> his political considerations on empirical reality and not on a tabula rasa, but he fails to see that he cannot actually afford to do so. For this conservative principle retained its full meaning only as long as empirical reality largely corresponded to the conservative values, but it became meaningless since this reality was radically reshaped on the basis of the principles of 1789; its conservative enemies now had to renounce it, in effect to make tabula rasa, since they were no longer fighting to defend what existed, but to assert an ideal that was already outside reality. Maurras considers the social and political conditions under capitalist democracy unacceptable and *must* therefore call for a radical rupture, to be brought about on the basis of a preconceived plan. This break will be dictatorship and will have to involve repression and retribution; only after the dictatorial consolidation of the new regime will the phase of "government normal" follow<sup>303</sup>. The transitional dictatorship and the normal government will be headed by a hereditary monarch, because only personal and hereditary authority guarantees openness, accountability and stability. The normal royal government also has dictatorial-casaristic features, but these are tempered by paternalism and institutionalized autonomy of the corporately represented interests; to clarify the difference between tyranny and his monarchy, Maurras resorts to<sup>304</sup> the old standard distinction between absolu (= independent, but at the same time limite) and despotique. Nevertheless, his detachment from the standpoint of classical conservatism is also noticeable in his conception of the monarchy. In the eyes of the old conservatives, a dictatorship that no longer wanted to defend a threatened state but to bring a new one into being could only be a revolutionary, i.e. sovereign, dictatorship, whereas for them the king could only act in a provisional sense, i.e. on behalf of existing, socially still dominant states.

<sup>301</sup> Mes Ideas, 125,127.

<sup>302</sup> A. a. O., 109.

<sup>303</sup> Enquete, f538.

<sup>304</sup> Mes Ideas, 275,279 f., 282, For283. the above-mentioned distinction, see chap. II, sect. b. above.<sup>3</sup>

of the social strata was allowed to become dictator. Maurras' king, however, comes from the social nothingness and soils the social universe from the ground up, without naming the forces that govern him; <las concept of dictatorship thus hangs in the air, and no less blue appears the concept of royalty altogether, especially when one considers that the metaphysical or legitimistic justification of it is also missing, and in its place a more instrumental and institutional conception takes its place: Royal Casarism appears to be the most effective and appropriate form of government from the point of view of the superior national interest. The personal bond and vassalage to the king, which were present in spiral intensity in the classical conservatives, despite their standing self-confidence, do not play the slightest role in the world of thought, let alone in the psyche of the free intellectual Maurras; his royalism, like his political Catholicism, remains cerebral, without the inner warmth of the surviving tradition.<sup>305</sup> The steady deterioration of Action Franc::aise's relations with the pretender<sup>306</sup> to the throne also has to do with this, although it is ultimately due to the practical hopelessness of royalism in all its versions.

The distance from classical conservatism is also indicated by Maurras' attempts to solve the problem of aristocracy, which every anti-democratic thought has to overcome theoretically. Maurras knows, of course, that his aristocracy as well as his ideal formation of state and society must first *be* created. He does not explain in detail from which existing human and social material it has to be forged, but its formation is an essential task of the Konigtum<sup>307</sup>. At an early stage, Maurras gives priority to<sup>308</sup> the "aristocratie de nais sance", without paying attention to the logical contradiction that exists between the proposal of the conscious creation of an aristocracy and the thesis of the superiority of the aristocracy of birth. This contradiction, however, continues to operate in secret, and finally it results in a displacement of the traditional idea of aristocracy <by the modern concept of elite,> which, however, in its turn remains implicit and ambiguous, hidden as it is in Maurras's conception of authority. Authority, he thinks, is given at birth, some people possess it and others do not, it belongs to the same category of properties as, say, gentility or genius, and underlies the possession of power, which in turn cannot be<sup>309</sup> sustained without work, and work well done. Obviously, here <las birthright is no longer traditionally understood. In the traditional conception, one basically possessed birthrights

<sup>305</sup> Cf. Gurian, Integr. nationalism, 92; Remond, Droite, f172.

<sup>306</sup> For details, see Osgood, French Royalism, esp. 129 ff, and Weber, Act ion Fran aise, ff.205

<sup>307</sup> Enquete, 141.

<sup>308</sup> A. a. 228.O.,

<sup>309</sup> Mes Ideas40., 42,48.



Maurras' aristocrat soil, however, has birthrights because he was born with certain qualities that distinguish him from the many. It cannot be ruled out in advance that such aristocrats will be born in all social classes, nor that they will want to assert their birthrights. If this is so, then their natural superiority must force a constant renewal of the composition of the upper class, so that finally the aristocracy, conceived as hereditary, will transform itself into a modern elite. It is precisely in his attempt to refute the democratic myth of equality by means of a Greek doctrine of inequality, namely one that would prove the equal biologically vested privilege of each member of the aristocracy over the vulgus profanum<sup>310</sup>, that Maurras undermines the concept of a hereditary aristocracy. For if the concept of the elite contradicts the democratic conception of equality, it has an egalitarian effect on the conception of a hereditary aristocracy, i.e. it implies the fundamental access of every suitably gifted individual to the aristocracy. Despite the inner logic of his argumentation, Maurras cannot openly advocate the modern concept of the elite, since he oscillates between two equally strong polemical needs: he needs a modern - and at that time this meant a naturalistically biologically defined - theory against the democratic religion of equality, but at the same time he has to fight the rule of the plutocracy, and this can be accomplished with keywords such as duration, tradition, and stability beyond generations. A consistent acceptance of the elite concept could have led to the affirmation of the rule of the plutocracy. Maurras will admit, in other words, on the basis of his own premises, that the elite principle is already fully realized and that no overthrow of democracy is necessary for its implementation. For he himself describes democracy as a

Oligarchy<sup>311</sup>, degrading the much lamented equality to a harmless façade, while on the other hand he considers inequality to be a law of nature; but then one cannot reasonably assume that laws of nature ceased to be effective after the introduction of democracy in the year plotzlich 1789<sup>312</sup>. The basic aesthetic and literary trait in

Maurras' thinking is not least noticeable in his ideal social model. It is not the realities and problems of a highly industrialized society that are in the foreground here, but rather the effort remains formal, i.e. it applies to the intellectualistic and basically unhistorical elaboration of a structure, the balance and harmony of which, as it is described on paper, is perceived as a sufficient solution to the practical questions. The aesthetic

The perfection of the construction is thus considered to have the power, as it were, to eliminate, through its pure presence, any deficiency or resistance of reality. The aesthetically and politically satisfying order in the Staatsgeftige soil is secured by the following "formule constitutionnelle": "Les libertes, en bas - L' 'autorite, en haut"<sup>313</sup>. In it, Maurras tries to reconcile two positions that logically and temporally diverge: the pre-revolutionary conception of the decentralized system of local liberties and the modern demand for an effective executive in the hands of a Strong State. This difficulty, which has often been noted<sup>314</sup>, is met by the mere assertion that decentralization and local and corporate freedoms will not lead to any disintegration of the state if the king remains<sup>315</sup> at the head of a unified army and all major public service organizations. But this is where the problems begin. For it is not made clear how far the powers of the central royal authority would extend into the sphere of society, so that the basically autonomous and even self-taxing<sup>316</sup> corporations could, if necessary, be forced to fulfill their financial and other duties to the general public as represented by the state. Maurras' scheme seems to be functional as long as the general consensus is given, but it does not offer solutions for conflict situations, and this is probably due to its aesthetic, i.e. not juridical or sociological character. But we will come back to this in the analysis of the problem of corporatism.<sup>317</sup> In this context, it is necessary to point out another weak point in Maurras's argumentation, which is also indicative of the internal contradictions of his position.

Although Maurras rejects liberal individualism and accepts the "association" as the ultimate social unit in place of the individual, he does, on the other hand, embrace the separation of state and society; he views the integration of the state into the economy with unease, while acknowledging its occasional necessity, and believes that normally the state should serve society. The state is a subordinate entity in relation to society, inasmuch as the building blocks of the latter, i.e. the "collectivites autonomes" (this "veritable substance immortelle de la nation"), preceded it in time and could possibly outlive it<sup>318</sup>. This separation of state and society, and this placing of society in the foreground, is, of course, not done by Maurras with liberal intentions, but rather constitutes a new development of the state.

<sup>313</sup> Enquete, 552.

<sup>314</sup> See, for example, Remond, Droite, ff; 178 Weber, Action Française, 524.

<sup>315</sup> Enquete, f326

<sup>316</sup> A. a. O., 543.

<sup>317</sup> See below section 4.

<sup>318</sup> Mes Idées, 122; 119, 121, Enquete, 37.

<sup>310</sup> A. a. O., 115, 97.

<sup>311</sup> A. a. O., 172.

<sup>312</sup> A. a. O., 156.

The *societas civilis* was dead in the meantime, and its slogans had to be given a substantially different concrete meaning under the conditions of a liberal-capitalist society. The *societas civilis*, however, was now dead, and its slogans had to take on a substantially different concrete meaning under the conditions of a liberal-capitalist society. Thus, for example, he saw an important task of his monarchical state serving society in "garantir les propriétés contre la Révolution qui les menace"<sup>319</sup>. At the time this was demanded, it had to amount to a call for the defense of the plutocracy, which otherwise would have been so obdurate; even the coquettish conservatism of the desk man Maurras for agrarian economy and landed property did not alter the practical sense of his plea for the prohibition of political strikes and against the reduction of working hours in industry<sup>320</sup>. Like the treatment of the aristocracy or elite problem, these ideas and proposals of Maurras reveal an<sup>321</sup> ambivalent attitude toward capitalism. In general, he can be said to vacillate between the models of a statist-corporative monarchy and a right-wing dictatorship designed to<sup>322</sup> defend (primarily capitalist) property and the (liberal) separation of state and society against the threat of socialism. Because of this ambivalence, Maurras's position did not satisfy either the bulk of the bourgeoisie or those of his original admirers and followers who wanted to think about the social and economic problems of industrial society in more modern categories and therefore turned to<sup>323</sup> fascism or National Socialism in search of solutions. He was only able to appeal to parts of the small, mainly provincial bourgeoisie, which were suffocating between the "judicial" high finance and the socialist masses; among them he also found some backers.<sup>324</sup>

One reason why Maurras carelessly passes over the problems or contradictions of his social design is his conviction that the overarching national idea, or integral nationalism, would eventually be able to settle all partial conflicts of interest with regard to the great national interest. His integral nationalism would finally be able to settle all partial conflicts of interests with regard to the great national interest, to instill in all members of the community, regardless of their position in the social hierarchy, a single spirit and will, and thus to forge the nation together in the consciousness of a common destiny. When he explains:

Les nations avant les classes. Les nations avant les affaires"<sup>325</sup>, then he deviates once again from classical conservatism, which feared the egalitarianism of the modern idea of nation and therefore followed the standish-hierarchical idea.

and<sup>326</sup>, at the same time, it finds the best connection with the

- The political language and ideology prevailing in France, which for certain historical reasons was pleased<sup>327</sup> both on the left and on the right in the nationalist bard, is faithful to his aristocratic convictions, but Maurras does not want to infuse his nationalism with democratic, plebeian or plebiscitary elements, and this puts him in a quandary all over again. He wants to make nationalism the strongest force of social integration, but at the same time he deprives it of the very thing that could have made it such a force. Maurras could not see from his presuppositions that in the age of total mobilization living nationalism had become an egalitarian-revolutionary force and that, since it had become so, a half-hearted use of it could no longer achieve the highest socio-political effects. Nationalism as represented by Maurras, therefore, met the same fate that befell other aspects of his attempted synthesis. In themselves, his positions gave the impression of products of intellectual coquetry that could or could not be taken seriously, and they even took on operative features to the extent that they could be taken seriously. In themselves, his positions gave the impression of products of intellectual coquetry that could or could not be taken seriously, and they even took on operative features to the extent that they were associated with old conservative or legitimist aspirations that still exist on the margins; however, to the extent that they (among other, extraneous motives) have had a direct or indirect effect on modern mass movements such as fascism or National Socialism, they played a certain historical role, which must, however, be described as incidental.

#### d. „Conservative Revolution“

Compared to the English or French development, it could seem as if the ideas of the (right-wing) political intellectual movements in Germany had been more persistent and effective. This is an optical exchange, due not only to the often sparse knowledge of English and French intellectual history, but at least as much to the abundant willingness and comfortable habit of viewing and understanding German intellectual history in the light of the National Socialist phenomenon. If the above-mentioned ideas had a predominant political influence in Germany, it was not because of their special affinity with the "German" or "Prussian" spirit or "Sonderweg," as the victors' ideology would have it, but because of the unique and highly paradoxical situation that caused a radicalization of large parts of German life after 1918. It remains significant that, to the extent that literary figures became the mouthpieces of this bi-rational radicalization, the aestheticizing aspect of their con-

<sup>319</sup> Enquete, 25.

<sup>320</sup> op. cit., 35ff.

<sup>321</sup> Cf. the remarks of van Nolte, Fascism, 163.

<sup>322</sup> For more on this concept of dictatorship, see 4c below.

<sup>323</sup> Osgood, French Royalism, 155

<sup>324</sup> Weber, Action Française, 241., 263.

<sup>325</sup> Mes Idées, cf. 258., LX.

<sup>326</sup> See above chap. III, sect. 46.

<sup>327</sup> See Remand, Droite, 161 et seq.

The latter more or less faded into the background, while statements on current political and economic issues came to the fore, often with a programmatic or even ideological claim in which the original intellectual ambition continued to operate. The encounter between politicizing literati and radicalized bourgeoisie was thus influenced by the ideological needs of the latter at the time, which helped the former to gain greater publicity, but at the same time demanded a certain amount of consideration from them. The radicalization of large sections of the bourgeoisie was also decisive for the "conservative revolution" in another important respect: *it* gave shape to the already actual fusion of conservatism and liberalism, which gave the impression, at least among the theorists of the "late nation," that this fusion was not a fusion of bourgeoisie and liberalism, but rather a fusion of the two.

Junker reaction" and "conservatism" retained the upper hand. In reality, parts of the bourgeoisie resorted to "conservative" ideas not because they were subject to the pressure of the socially stronger "reaction," but simply because the German situation after 1918 put serious obstacles in the way of a conditional acceptance of „Western" parliamentarism - for reasons that were largely independent of the internal German development before 1914. It is wrong not to regard ideas as weapons, but to hypostatize them and accordingly to conclude from the spread of anti-parliamentary or "anti-Western" positions within the bourgeoisie that the old "Junker reaction" in the Germany of that time was the main social instinct. Nothing less than that: with the same social composition, the Germany of that time also had liberal-parliamentary in the

Western" sense - but not in the same internal and above all external situation. Without the defeat by the liberal-parliamentary powers of the West and without Versailles, the "revolutionary" aspect of the "conservative revolution" - that which ideologically reflected the radicalization of parts of the bourgeoisie - would most likely have disappeared, and the fusion of conservatism and liberalism in the face of the socialist danger would have taken on a different or "Western" form. The <sup>329</sup>fact that the *capitalist* forces were socially dominant even under the given circumstances <sup>328</sup>is shown by the persistence with which the *capitalist* forces were able to maintain their position.

<sup>328</sup> Cf. Schwierskott, Moeller, 81.

<sup>329</sup> See above, section Id in this chapter. The affirmation of the Weimar system by „conservative" representatives of the educational bias points in the same direction (for more on them, see Klemperer, *New Conservatism*, 112 ff.), as does the attitude of some publicists, such as Quabbe or Ullmann, who are considered part of the "conservative revolution" (see our discussion of the harbingers of neoliberalism from the Weimar period in the last paragraphs of this section).

the most "reactionary" political groups defended economic liberalism during the Weimar period (see below). The accompanying (partial) rejection of political liberalism and "Western" parliamentarism is by no means proof of the influence of the "Junker reaction" and of traditional conservatism on their actions and thoughts. For it was not *as* conservatives that they demanded the "authoritarian" state in order to reverse capitalist development, but rather - which is of great importance for our question - in order to prevent it. For they demanded the "authoritarian" state not as conservatives in order to reverse capitalist development, but - which makes a big difference for our question - as a modern and modernist group of interests that wanted to harness the state for its own purposes, albeit perhaps in alliance with other groups; after all, the threatened bourgeoisie in other countries, too, which had gone through their own and not the German, "Sonderweg," sought its (preliminary) salvation in the "authoritarian" state. Only from the perspective of "progressive," "liberal," or "democratic" (in the moral sense of these words) prejudices can the authoritarian or dictatorial in itself be identified with the specifically conservative. In a scientific investigation, however, such value-laden identifications must cause confusion.

The radicalizing paradox for the German bourgeoisie did not consist in the fact that the social-democratic arch-enemy, which had been protected and held for decades, was now suddenly at the helm of the state; On the contrary, it can be assumed that - *ceteris paribus* - the Maf3igung of Social Democracy, i.e. its lack of a truly revolutionary élan, had pleasantly surprised the bourgeoisie and won it some social concessions and cooperation within the framework of parliamentarism. Paradoxical and radicalizing was the fact, caused by the outcome of the war and the peace treaty, that the German bourgeoisie felt undermined, exploited and humiliated by the ruling bourgeoisie of the victorious liberal-parliamentary nations, which had fought the war in the name of the noblest liberal and democratic ideals. But this was precisely what prevented a rapprochement with the Social Democracy, which was ready to talk anyway. For the (right-wing) bourgeoisie, which at the same time was afraid of Bolshevism and generally looked far and wide for arguments against the left of all shades, it was propagandistically most expedient to lump together the danger from the left and the external political catastrophe, to portray the latter as the work of the German revolution, and to label every conciliatory gesture of the Social Democracy toward the victors as proof of the treason committed. But such an argument was only possible and effective because the national question had in fact assumed central importance; it is quite conceivable that under normal foreign policy circumstances the "totalitarian danger" from the left had been countered by precisely those "Western" liberal liberties which now appeared in some bourgeois circles to be almost as odious as Bolshevism. The flip side of this pro-Pagandist advantage, however, was that the radicalized bourgeoisie was also partly in a bind: it had to disavow capitalism, which it held dear, at least in its "Western" form at every turn, and with

The assumption, however, would be wrong that the enmity to the "West" was only invented or substituted in order to fight the internal enemy more effectively. On the contrary, this enmity was sincere and elementary, because the bi.irgertum that felt it was actually affected at its most sore point: it had been mercilessly pushed to the wall by the class comrades of the West and had been excluded from the community of the wealthy and civilized as an external pariah; it had, in other words, experienced capitalist robbery at first hand, and this experience - precisely this one - was the most difficult to digest. Its tangible interests suffered considerably, and the even worse sufferings of the starving masses could not offer sufficient consolation. With this mass, one showed solidarity, at least externally, if one wanted to act in full national unity and dignity against the "West"; on the other hand, one detested and feared it, because in this very suffering of theirs - no matter who was to blame for it - it could become dangerous at any moment. The radicalized bourgeoisie stood frightened, mistrustful and in extreme nervous tension between the Scylla of the native proletariat and the Charybdis of Western capitalism, and it directed itself against the internal enemy all the more because it saw itself powerless against the external one. The character and intensity of its turn against liberalism and democracy can therefore hardly be grasped if we take into account only - and one-sidedly - the internal class antagonism and do not want to take note of the fact of defeat and exploitation by foreign capitalism or liberalism. For the struggle against the internal red danger could at most explain the spread of authoritarian constitutional ideas within the right-wing wing of the bourgeoisie, but in no way the fact that this disengagement from political liberalism was so closely connected both with the priority of the national question and the rediscovery of popular ideology and with anti-capitalist slogans. However, it is precisely this phenomenon that must be satisfactorily interpreted when it comes to interpreting the "conservative revolution" in its specificity and complexity. In their thinking, the national question remains central - and not only in the (inevitable) function of an alibi for achieving certain goals.

The main themes of the project were the "original" or idealized folklore and mythological archetypes, and the corresponding aversion to the city, money and capitalist society in general; love of the "heroic" and the corresponding declaration of struggle and sacrifice, etc., etc.). ) had been spread.

33<sup>1</sup> Nationalization, 419.



Given the primacy of the national question in the years following, 1918 it was only understandable that national thought was at the forefront of these issues. The more or less strong folk coloration of this nationalism was also inevitable, for the call for the self-assertion of the nation had to be underpinned by the proof that this nation had an irreducible and inconceivable essence, an unmistakable and irreplaceable identity, in which lay the source of its strength and its will to live. The idea of the nation conceived national identity in all its irrational or transrational existential depth and, moreover, showed all enemies incomprehensibly how strong the cohesion of such a nation had to be under the present adverse circumstances, since the national essence flowing in the blood bridged class differences and survived the change of social systems. From the idea of the nation, it was easy to move on to the second major theme of the "„conservative revolution," namely the critique of capitalism and liberalism. For the nation, which was based on and was folklore, was a fundamentally different socio-historical entity than the liberal-democratic nation of the West, which consisted of a sum of equal, i.e. abstract and incoherent atoms, and was not formed by mystical and mythical forces, but rather by the power of the people.

<The people of the West were held together by cerebral humanistic ideals. Responsible for the disintegration of the nation and the people in the West was, of course, the unrestrained capitalism, the rule of money, materialism and eudamonism, the spiritual massification and the massive spiritlessness. Exploited - and corrupted - by the liberal capitalist of the West, who demands the popular and cultural decline, the German entrepreneur now, in the opinion of the "conservative revolutionaries," soils himself <The German businessman must distinguish himself by orienting his behavior to the higher spiritual values which sustain the life of the nation and the people; accordingly, the organization of economic life must also reflect the national-volk unity of blood and spirit, and do so by grasping the organic and corporate principle. But this - and thus we come to the third main ideological theme of the "conservative revolution" - must in no case mean egalitarianism, as it characterizes the degenerated liberalism. Against massification, leveling and vulgarization, the idea of an elite is asserted which, conscious of its quality and its special closeness to higher national values, can and may also govern authoritatively; the construction of the "authoritarian state," which we will discuss later, has been the political and legal formulation of this elite idea. The latter, however, is also connected with other aspects of the thinking of radicalized biirgerism. With regard to the neuralgic national question, it means that the elite is at the forefront of the struggle of the nation and the people for self-assertion; and when translated into world history and ethics, it means that elites are there because the struggle that is always and everywhere raging in history makes natural selection inevitable and that, in view of this omnipresence and inevitability of the elite, the elite is there because the struggle is always and everywhere raging in history makes natural selection inevitable.

The heroic ideal of life is the only realistic ethical choice available to the people in the midst of the struggle.

The question now arises to what extent and in what sense these ideological The basic themes - that is, nationalism with a folk tinge, the critique of culture and capitalism, and the anti-capitalist social concept, the idea of the elite and the heroic ideal of life - constitute an ensemble that can be described as conservative. First, however, it must be noted that this ensemble presents itself in a somewhat coherent form only in exceptional cases; as a rule, the thinking of the "„conservative revolution" remains fragmentary, and the questions are themselves arranged in trains of thought that revolve around certain contemporary, even daily political emphases. The "conservative revolution" was not a firmly defined ideology that, when the catastrophe of 1918 struck, was taken out of the drawer to offer explanations for the past and orientation for the future. Only the mood of the radicalized bourgeoisie, as it emerged in that concrete and unique national situation, brought together various - though for the most part already existing - thought motifs under a common denominator, which in turn did not achieve strict intellectual unity. The more general or fundamental questions were not dealt with on a theoretical, but rather on a journalistic or at best on a literary level, and even then always in conscious and deliberate connection with the historical moment. The starting point of the reflections is thus not ideological or sociopolitical problems in their general theoretical form, but the national concerns of Germany, a country between East and West, between communism and capitalism, between defeat and awakening. The questions raised by the "conservative revolution" are, in this sense, eminently *German* questions, whose topicality has by no means faded in the meantime, although they arise today under different conditions and omens.

The close ties between the "conservative revolution" and Germany's nation The first difference between this and classical conservatism, which had in mind an order that, for all its local peculiarities, was nevertheless universal in the sense that it was to be oriented everywhere and equally to the divinely sanctioned conception of law of the *societas civilis*; in this respect, there was no nation with a special world-historical mission within the Christian community. Also, the folkish coloration of the national idea brought the "conservative revolution" into conflict with classical conservatism. The popular idea, however, was formed during the process of dissolution of classical conservatism and, although it was often used against the liberal atomization of society, etc., it contained essential aspects that contradicted the noble-conservative understanding of an organic-hierarchical community. Already for Lagarde, the primacy of the popularly constituted nation meant not only a radical break with the traditional dynastic nation-building, but also a radical change in the way the nation was organized.



This was not only a change in the conception of the nation, but also a barely conceivable elimination of the old stagnant hierarchical priorities, since the nobility was now allowed to be in the service of the overarching and superior popular-national idea and to possess rights only for the fulfillment of its resulting duties, which, by the way, also applied<sup>332</sup> to the state in general (i.e., to the crown as well). Moreover, the historical perspective shifts drastically here, because a nation that appears as a dynamic greatness, as a collective and thus potentiated source of energy and readiness for action,

The "lives not from the past, but from the future"<sup>333</sup>. Accordingly, Lagarde also turns the old concept of conservatism on its head, and in his orientation toward the future he demands, in order to be, conservative, "conditions"<sup>334</sup> that are worth preserving.

This formula, taken up by Moeller van den Bruck (see below), in itself pointed to a second essential difference between the "conservative revolution" and classical conservatism. Since the "conservative revolution", in view of the extent of the German catastrophe, sought salvation in a radical break with the miserable present, it had to abandon<sup>335</sup> openly or tacitly the belief in organic growth in history - which was fundamentally present in classical conservatism even when, for example, the call for a dictatorship deprived it of practical meaning. Nor could it adopt the idea of progress, since this was written on the flags of the liberal enemy in the West and also on those of the Bolshevik enemy in the East and in the interior. As a theoretical way out, the projection of the heroic ideal of life into the philosophy of history remained, which resulted in the panorama of an alternating rise and fall of nations fighting against each other in a dispassionate manner. This profane interpretation of history incorporated the basic motifs that the "conservative revolution" had inherited from earlier literary figures or philosophers, in whatever interpretation (vitality vs. decadence, elite or masses vs. the masses, blur vs. money, culture vs. civilization, etc.). Some of them, of course, already appeared among representatives of the latter, especially when they campaigned against liberal optimism about progress or pacifism. However, their meaning was quite different at that time (historical pessimism, for example, concerned only the possibilities of man as a demiurge in the historical universe and in no way questioned the beneficent presence of God's providence in history), and, above all, they were placed in a differently conceived overall framework, which did not include all the

The "conservative revolution" was less than profane or paganistic; hence the well-known aversion of the conservatives to all naturalism and immanentism<sup>336</sup>. This alone shows that the above-mentioned basic motifs of the historical philosophy of the "conservative revolution" were not formed by a direct reception or reinterpretation of classical conservatism; rather, they are new phenomena in the history of ideas, and their emergence - in contrast to classical conservatism - hardly owes anything to the nobility and its ideologues; the bourgeois or petty-bourgeois element prevails, at any rate, in the circle of publicists of the "conservative revolution. In any case, the bourgeois or petty-bourgeois element is absolutely predominant in the circle of publicists of the "conservative revolution," just as it<sup>337</sup> was predominant all along the line among the English or French politicizing aesthetes of the right.

The term "revolutionary" could be given to the "conservative revolution" if we take its slogans in their nominal value and assume that it really wanted a break with the present and a real new beginning. But if it is true that all that remained of the old, historically oriented conservatism were<sup>338</sup> relics of a destroyed system of reference, then we will have to ask the question of what the conservative aspect of it was, or more precisely, in what respect it was different.

conservative". To put it even more concretely: if an attempt at preservation is necessarily opposed to a change or a progress, what changes or what progress does the "conservative revolution" fight against in order to preserve its specifically "conservative" features? Now the polemical point of the "conservative revolution" is twofold. First of all, "conservative" means anti-communist. Since the national question and the nation are at the center of the "conservative revolution's" interest and conception of history, it cannot under any circumstances be reconciled with communist internationalism, which is based on the primacy of class. This is also true for those nationalists who are not afraid of Bolshevik anti-capitalism, but a fortiori it is true for those who believe in planned economy and collectivism.

<sup>336</sup> S. o. ch. III, sec. 6a, 6c.

<sup>337</sup> For this reason, the attempt to blame the development of "conservatism" on phenomena that have an essentially different origin from it makes little sense. Thus Klempcrer thinks that conservatism landed in fascism through the commitment to the pessimism of Freud and Nietzsche. This degeneration seems to him all the more regrettable because, in his view, the conservatism of the 19th century, in contrast to that of the 20th, was characterized by its closeness to liberalism (New Conservatism, 5, 21 ff, 42). In this way, he unjustifiably projects an idyll into the past that corresponds to his wishes concerning the present, and he does not see that the right of the 20th century was much closer to liberalism, especially in the economic sphere, than was the conservatism of the century<sup>19</sup>. (see below in this section and section 4c). For him, as for many others

liberal" men of letters, too, but liberalism is above all a matter of humanistic values, etc.

<sup>338</sup> N owing to an apt expression by Schwierskott, Moeller, 158.

<sup>332</sup> German writings, ff, 283349.326,

<sup>333</sup> A. a. O., 225.

<sup>334</sup> A. a. O., 8.

<sup>335</sup> Freund, cons. Harakiri, (41; cf. Schwierskott, Moeller, 157.

The "conservative" in the context of the "conservative revolution" means, secondly, anti-liberal. Secondly, "conservative" in the context of the "conservative revolution" means anti-liberal, but - and this remains decisive - liberalism is understood to mean the atomized, mass-democratic, egalitarian and at the same time plutocratic society in which material values and eudamonic doctrines prevail at the expense of higher spiritual and cultural concerns. The vast majority of "conservative revolutionaries," however, do not combine criticism of political and social liberalism, which is already heading toward an anarchic and unpredictable mass democracy, with criticism of economic liberalism, quite the contrary. This is an important point, because, as we will see, this discrepancy gives rise to figures of thought that prepare the neoliberal "conservatism" of the postwar period; they are not immediately conspicuous, however, because they are derived from the nationalist and authoritarian teachings of the

The "conservative revolution" will be covered up in many cases.

The ideological asymmetry of the "conservative revolution," as it becomes visible in this unmediated juxtaposition of popular-corporate and economic-liberal views, was - in addition to its substantive distance from classical conservatism and also in addition to the objectively ambiguous connection between conservatism and nationalism, although meant in an anti-communist way - an additional reason why the definition of conservatism occasionally undertaken within its ranks remained unspecific and actually meaningless. When Moeller van den Bruck said that conservatives think not only in economic categories, but "in the eternal conditions of human nature" and reject the liberal and revolutionary concept of progress with a view to the same thing<sup>339</sup>, even a follower of Machiavelli or Pareto could have agreed with this; when he wrote that conservatism is "to make a beginning again and again", a progressive or a progressive would have agreed with this.<sup>340</sup> When he wrote that conservatism was "always making a start," a progressive or a revolutionary could have agreed with this; and when, following Lagarde, he claimed that conservatism was "making things worth keeping," everyone could have signed it.<sup>341</sup> Everyone could have subscribed to this, especially since the decisive last word could be interpreted at will. In view of this incurable vagueness, it is fruitless and, what is more, misleading if the analysis of the phenomenon of the "conservative revolution" is oriented to<sup>342</sup> the "conservative" self-understanding or to the intellectual heights of this or that representative of this direction.

<sup>339</sup> The Third Reich, 216, 272ff., cf. 241, 296.

<sup>340</sup> A. a. 0., 217.

<sup>341</sup> A. a. 0., 291.

<sup>342</sup> This is done by Mohler, who defines the conservative aspect of the "conservative revolution" as follows: "not a clinging to what was yesterday, but a living out of what is always true" (Cons. Rev., 116). Apart from that, however, all - leftists, rightists, theologians and materialists - could claim (and have claimed) to derive their demands not from subjective ideas, but from the order of being itself.

historical interpretation can only be provided by the aforementioned double polemical reference of the term "conservative," on the basis of which two main tendencies can be distinguished from one another. If "conservative" means,, only nationalist, and if this nationalism turns exclusively against communist internationalism, but not at the same time against the "anti-capitalist longing" which seems to live on in communism, the result is a tendency which may be called the,, "national revolutionary" or "national Bolshevik" tendency. If, however, the "conservative" has a double anti-communist point, i.e. if it is opposed both to internationalism and to collectivism, and if, despite all criticism of capitalism, it remains attached to economic liberalism, then this body of thought corresponds to the ideas of the conventionally so-called "J unconservative" tendency; the popular idea has in itself no concrete socio-political character and can get along with both tendencies in respective different forms and doses.

The spectrum of the „conservative revolution" thus encompasses a variety of logically and intellectually possible positions, but these can be classified, surveyed and understood if one constantly keeps in mind the two socially opposing poles of the movement as points of orientation. At the "right" end, we find a Christian-colored combination of liberal and obedient views, while at the "left" end, which is populated within the movement, we find partly utopian social designs in which the citizen as the determining social figure and the reference to traditional humanist ideologies and theologies are missing. The contrast between the two positions on this very central question was also known to those concerned, and the nationalist burghers even fought vigorously against the nationalist etatists or collectivists (see below); on the other hand, however, there were a number of more or less striking similarities which pushed the socio-political contrast into the background. In both movements, which were equally influenced by the experience of the German catastrophe, the national question and nationalism were at the center; in both, the anti-Western affect was often combined with the anti-Western attitude.

Mohler's definition implies that what was yesterday does not always and not necessarily coincide with what is always valid. Precisely the conviction that the (traditionally) existing is in contradiction with what „is truly" valid has so far been the ideal starting point of natural revolutionary undertakings; for classical conservatism, conversely, the long duration of the traditionally existing *could* be explained on the basis of its overlap with what is eternally valid. It has been noted that Mohler by far overestimated the philosophical foundations of the "conservative revolution" - that is, a movement that combined many ideas in a sometimes surprising way, but produced few and, moreover, was strongly influenced by contemporary history and daily politics - when he placed at its center the idea of the eternal return (Stern, Kulturpessimismus, 341). Thus, although his philosophical achievements were very moderate, he also did very little to interpret this movement historically or to explain its social and political content (cf. Schwiertschott, Moeller, 98).



with anti-parliamentary political ideas, although their views on the means and goals of eliminating parliamentarism differed (widely); both shared, in different forms and intensities, the same aesthetic motifs, such as the heroic ideal of life and the corresponding critique of capitalism and interpretation of history. <The heroic ideal of life and the corresponding critique of capitalism and interpretation of history; and finally, the fact that the "National Bolsheviks" often expressed their rather confused social and iconic ideas in the fashionable corporate and Volk language, avoiding the classist language, contributed to the divergence: ilk language, avoiding class struggle slogans (just as the "Young Conservatives" concealed their economic liberalism behind the same language), contributed greatly to obscuring the crucial difference between the two tendencies. Here we do not want to discuss the social and economic ideas of Strasser or Niekisch, which, by the way, have no relation to the problem of conservatism or liberalism. Interesting for our question is the reconstruction of the "young conservative" direction in its ambivalence.

Since the publicists of the "conservative revolution" came to the public only under the impression of the German catastrophe, Moeller van den Bruck's writing career might be the only significant example in which both the continuity between the thought motives of the right-wing political intellectual movements up to 1914 and including that of the "conservative revolution" and the shift of tone and interests already during the war years, but above all after it, can be traced. At the beginning of the intellectual development of Moeller, who probably paradigmatically represents the literary type<sup>343</sup>, there are two great guiding thoughts: the aesthetic one, which does not want art to be a mere imitation of nature, as the contemporary naturalism wanted, but rather an imitation of nature: The heroic one, which, following Nietzsche's teachings and Social Darwinism, glorifies the struggle in its natural inevitability as well as in its ennobling effect, understands the formation of the elite from the selection of nature, and, taking up the opposition of elite and mass, leads to<sup>344</sup> a cultural critique. The Victorian idea soon receives a prominent place in this combination and shapes itself accordingly, i.e. heroically and aesthetically. As a racially predetermined unit, <las Volk has its own special permanent character and develops its own style - a character and a style that are always in struggle with those of other peoples and must exist in them; a large, solid community under the leadership of heroic figures that asserts its position in a certain space: this is Moeller's picture of the history of the German people since the beginning of the 20th century.

<sup>343</sup> See the concise definition of literate in Schwierskott, Moeller, (37, cf. 155).

<sup>344</sup> Evidence in Stern, Kulturpessimismus, esp. Ober 229. Nietzsche's Einfluss auf den jungen Moeller s. Schwierskott, Moeller, ff. 21

Armin<sup>345</sup>. The aestheticization of the image of the people and of history begins with the depiction of the elementary primal character of the people, which, as in Lagarde<sup>346</sup>'s work, is embodied in mythical or mythicized figures. The Germanic develops and enriches itself, it becomes idea, culture and political organization, but it retains its originality and is clearly distinguished in its aesthetic self-sufficiency from later additions such as Christianity or feudalism. A twofold difference to classical conservatism is noticeable here, which not only thought Germanic, Christian and feudal together, but also, in all its description of the medieval past, always maintained a certain relation to its historical reality, since this was still present in the form of standard rights, etc. Both the loss of any interest in such rights and the loss of any interest in the historical reality of the Middle Ages were the main reasons for this. Both the loss of any interest in such rights and the associated priority of the *people's community*, as well as the aesthetic need for stylization and thus abstraction from everything historical, drive the paganist Moeller to distinguish<sup>347</sup> fundamentally between the Germanic period, in which the people's community still lived and weaved intake, and the feudal period, in which degenerative phenomena such as rigid hierarchies, divisions and particularisms were widespread.<sup>7</sup>

It is true that Moeller's militant writings from the Weimar period project his earlier cultural criticism into the realm of the political. But it is only partly correct to conclude that the "conservative revolution" was not a spontaneous reaction against Versailles or Weimar, but a nineteenth-century ideology that was<sup>348</sup> reformulated under more favorable conditions after 1918. For even if we were to assume that the projection of the cultural-critical into the political had taken place without Weimar and Versailles, we can only explain its specific content, which at the same time constitutes <las specific, and indeed <las specifically German, of the "conservative revolution" in contrast to other European right-wing movements, on the basis of the enormous intensity of the national question as a result of the catastrophe of 1918. Only this catastrophe, and only the subsequent exploitation of capitalists by (foreign) capitalists, radicalized parts of the bourgeoisie and strengthened that peculiar, albeit already

<sup>345</sup> See, for example, *Eternal Kingdom*, I, ff. 53

<sup>346</sup> German writings, 239.

<sup>347</sup> *Drittes Reich*, 159 ff. (Moeller, however, had to distinguish between Germanism and Deutschtum in order to be able to count the Germans, in contrast to the English, for example, among the "young peoples," see *Ewiges Reich*, I, 327 ff.). I, too, thought "that all that we are accustomed to call the historical German nobility has hardly anything to do with Germanic ideas. All our noble prerogatives and conceptions which have become historical are completely un-Germanic, are for the most part even un-German, etc." (Neuadcl). (Neuadcl, 15).

<sup>348</sup> Stern, *Kulturpessimismus*, 223. Like other authors who have adopted the historical interpretation of the victors, Stern tries to downplay the event of Versailles and its significance.

The projection of the cultural critical into the political thus acquired a qualitative rather than a quantitative significance to the extent that the concrete historical situation determined the intensity and content of the political in a radically new way - otherwise the aforementioned projection could also have led to results similar to those of Carlyle, for example. There can be no doubt that the political publicist Moeller judged Western liberalism fundamentally in the light of Versailles (the chapter on liberalism in his main work begins with the memory of Versailles<sup>349</sup>). Accordingly, the criticism of liberal individualism and universalism is no longer based on the premises of classical conservatism, but from the point of view of the current existentially burning nationalism: individualism does not know the bond to the people and the fatherland and, by forming a bond with eudamionism and unprincipled nationalism, it does not know the bond to the people and the fatherland.

The coldly calculating intellect of the individual, detached from the people, must in its self-interest relativize and decompose<sup>350</sup> the common national values. Moeller finds it worst of all in the German revolution of 1918 that it sought to imitate the English and French liberal-parliamentary revolutions, neglecting the national idea and leading to submission to the will of the enemy in the expectation of a better material life: "One followed the impulse of the liberal man"<sup>351</sup>.

Unlike liberalism, Marxism is free from parliamentary and pacifist illusions. However, even though it is hostile to liberal nationalism, it recognizes as the most politically relevant collective not the nation, but the class, in its international dimension, which results in a paralysis of realist foreign policy thinking and a reintroduction of liberal universalism. It is wrong, however, to put the class struggle first in the hour of national demitization, overlooking the fact that there is not only subdivision of class by class, but also subdivision of nation by nation: are not Germany and Russia subdivided nations? <sup>352</sup> According to Moeller, Marxism is driven to this erroneous prioritization of the idea of class struggle because of another fatal commonality with liberalism: like the latter, the latter remains economically and therefore materialistically oriented (Moeller here confuses the materialistic ontology and sociology of Marxism with the eudamoni-

<sup>349</sup> Third Reich, ff99. , cf. 140ff.

<sup>350</sup> A. a. O. , 117ff.

<sup>351</sup> A. a. O., 43ff., 134(, ff185275., (here the quoted sentence).

<sup>352</sup> A. a. ff0.,77. , ff.201 , ff.224

The "spirit" of Moeller's defense against economic priorities has an ideological <sup>353</sup>implication, namely, that even without a change in the capitalist economic basis, the "spirit" of the economy would not be able to prevail. Moeller's defense of the "spirit" against the economic priorities, however, has an ideological implication, namely, that a non-capitalist, e.g., "national" policy is possible even without a change of the capitalist economic basis, if only the right "spiritual" factors are taken into account. spirit" prevails. Moeller, however, is not prepared to turn the game around and accept a collectivization of the economy in Erwartaun, which would not necessarily harm the national spirit, which is elevated above material concerns.

Thus we touch the social nerve point of „young conservatism". Moeller defends the capitalist entrepreneur against the Marxists <sup>354</sup>,because he is "in the forefront of economic matters<sup>355</sup>," and thus vividly demonstrates the fundamental ideological asymmetry of the stream he represents: on the one hand, economic liberalism is widely affirmed, but on the other hand, it is opposed by partly organizist and partly authoritarian views. This specificity, too, results from the concrete German situation, which emphasizes 1918,both the Volkisch national in the struggle against the "West" and the attack on authority.

rism in the struggle of the bourgeoisie against the internal revolutionary danger. There is no doubt as to the sincerity of the authoritarian sentiments of certain capitalist circles in the situation as it was at that time, but it cannot be determined with equal certainty to what extent they also seriously believed in the propagated popular organizationalism with its corporate applications or whether they substituted it with the intention of first exploiting it propagandistically and then quietly dropping it or practically getting rid of it.<sup>356</sup>

<sup>353</sup> A. a. O., 60ff.,71.

<sup>354</sup> A. a. ff.0.,201

m., Reality," in: Conscience (30. )7.1923, citing Stern , Kulrurpessimismus, 301.

<sup>356</sup> In any case, Fried thought (and here he was thinking of examples like Rathenau's) that within the "Generation der Söhne" the striving and searching for new forms of economy, which would mean the transition from the "free to the built" economy, from the unincorporated to the corporate, was quite sincere and daher on the resistance of the father,

i.e., the old type of entrepreneur (End, 133). This assessment of the situation results

However, this is from the point of view of the Tat Circle, which was much more critical of economic liberalism than other "conservative reformers" (see below about Zehrer) and was more inclined to estimate the extent and impact of similar tendencies. Over

It is not clear from Fried's analysis to what extent the reform-minded capitalists have in mind merely a rationalization of capitalism, such as that suggested by Troeltsch (see below), or a real sharing of their power with the working class with regard to national goals. Fried's ideas on economic policy are, after all, indicative of the attitude of economic circles which saw themselves cut off from the world market by the policies of English and Far Eastern capitalism, and therefore wanted to secure a new hegemonic position through the creation of an economic bloc of subordinate states, which would be based on the principles of autarky and social equilibrium (End e, ff261 ).

In this respect, the writers of the "conservative revolution" enjoyed a certain fool's license, i.e., in their sacrificial zeal they were allowed to go a few steps further in their description of the nationally required social organization than the economic circles behind them would probably go. At that time, Troeltsch spoke of the paradoxical relationship between literati with Romanesque-standish ideology and industrialists with ultramodernist tendencies who wanted to rationalize the economy according to the American model, whereby this rationalizing tendency would hide behind an ideology which, taken at face value, would amount to just the opposite <sup>357</sup>.

For all his open commitment to the "German entrepreneur," the high asthet and glib visionary ar Moeller did not stoop to the pettiness of national economic argumentation. Other leading members of his circle, however, which was<sup>358</sup> financed by certain industrialists, came more directly to the point, partly to demarcate the concept of the "socialization of the economy" against the Bolshevik experiment, partly to avert the transformation of the war economy into a planned economy for peacetime, and partly to openly defend economic liberalism against national-revolutionary collectivism. The first was Stadtler, who at an early stage pointed to the disastrous economic consequences of the Bolshevik policy of nationalization and the paralysis of private initiative; the message that Bolshevism nevertheless brought in its own confused and anarchic way was the collapse of the old capitalism of the 19th century. But what does <sup>359</sup>the socialization of the economy look like, which has to <sup>360</sup>carry the "synthesis of the genuine German people's state" against the Bolshevism of the East and the formal democracy of the West? Here Stadtler settles for the proposal that "between factory masters and the healthy elements of both the rate and the unions" miisse Agreement on the "participation of all people working in a factory.....according to the aspects of common interest, common advice, common work and common earnings"<sup>361</sup>. There Was no mention of a modification of the ownership structure or of an economic plan, even at that time, when the imminent threat of revolutionary violence meant that people were prepared to make major concessions, at least on paper. In the years that followed, Stadtler dropped his half-hearted concept of socialization altogether and justified the 1930expulsion of Strasser from the company. of the NSDAP, saying that a common front with the latter had now become<sup>362</sup> possible.

<sup>357</sup> Spe ctator letters (12 12. 1921), 247.

<sup>583</sup> Stern, Cultural Pessimism271., 273,277.

<sup>395</sup> Bolshevism and its Overcoming, 14(

<sup>360</sup> A. a. 0., f18

<sup>361</sup> Bolshevism and Economic Life, 39.

<sup>362</sup>Schuddekopf, National Bolshevism, 325.

In fact, the "young conservatives" were particularly sensitive to collectivist tendencies, which came from the nationalist camp, of all places, for understandable reasons. Even before the appearance of the National-Bolshevik trend, v. Gleichen polemized against the experiment of wartime economy and the attempt to continue it in peacetime. The state, he said, should merely ensure "guidance and order" for the economy, but "the war economy had gone so far in the wrong direction that there was little left to do but nationalize (socialize) production itself...". <sup>363</sup>. Particularly revealing for the social character of the "young conservatives" is Boehm's polemic against Jiinger's social draft<sup>364</sup>, which, out of fear of collectivism, amounted to a defense of "healthy" liberalism for Boehm, who also emphasizes the inner connection between total state and war economy or total mobilization, Junger's "Arbe iter" means the "absolute gap" to tradition and the radical new beginning within a "purely this-side Damonic-technical world". This attitude, however, is called "Bolshevism," and it implies the departure from the „religious foundations of our morality"<sup>365</sup>. Here Boehm displays an attitude that will also characterize later "conservative" neoliberalism: as soon as the citizen realizes that the te chnization of the world, which he himself is driving forward, threatens to lead to collectivism, he feels the need to put a stop to it by withdrawing from the technical-material world into the security of his spiritual values. Out of this attitude Boehm makes his distinction between the citizen who is

<sup>363</sup> Government leadership, 387.

<sup>364</sup> Although this deliberately moved on the level of world-historical and typological abstraction, it also contained hints that referred to the concrete situation of the time. For example, the indirect distancing from the "young conservatives" as the "finer and more experienced spirits" who were preparing a "change of scenery" by invoking pseudo-revolutionary formulations such as the "organic structure," etc:

The bourgeois has reached a state of despair in which he is ready to put up with everything that has hitherto been the inexhaustible object of his irony, if only security remains assured" (De r Arbeite r, 236(). Nor was the problem of property handled to the satisfaction of these citizens. In the workers' state, property ceases to be a question of principle or something moral or immoral; the only question is how to accommodate it in the work plan. The rule of the worker is not to be recognized by the fact that there is 'no property', but by the fact that property is also revealed as one of the special characters of labor. This is the most superior way of withdrawing it from the liberal initiative. The valuation of property is made here according to the degree to which it can contribute to the realization of total mobilization0., 274 (. cf. 283). Direct nationalization is rejected here only on grounds of expediency, and this was as little consolation to the Burger cin mentioned as Ju nger's distinction between workers and the industrial proletariat (op. cit.)0.,74, which in itself seemed to concede a certain future to the working entrepreneur.

<sup>365</sup> Burger12., 10,31.

The "Christian conservatism" is a matter of defending this liberal bourgeois who does not want to know what stands at the end of the unchurched technology and its materialism. It is the business of "Christian conservatism" to defend this liberal bourgeois, who does not know what is at the end of the un-cited technique and its materialism - but on the other hand it is emphasized that "all conservative renewal today paradoxically has a - seemingly! - liberal, namely a personalistic starting point"<sup>366</sup>.

Boehm left no doubt about the coherence of this Christian personalism with economic liberalism; the defense of spiritual values against the materialistic damony of technology and bourgeois eudamonism was for him inseparable from the defense of the free economy: "Certainly, the decaying forms of liberalism are most unpleasant. But from a purely economic point of view, the difficult juxtaposition of trade union and employer interests

The "socialist" literature of the time is still almost a preservation of conservative substance in contrast to a "socialist" literature that praises autarky and a planned economy.<sup>367</sup>

From this point of view, the polemic against liberalism (of the bourgeois) legitimates itself exclusively in the way that this aspect contains e en thalt that point in the same collectivist direction as Marxism. One such funda mental aspect is liberal eudamonism, which has its counterpart in Marxist materialism (Boehm, like Moeller, confuses ontological and sociological materialism with the ethically meant vulgareudamonisti). The Marxists thus basically continue Bentham's Jiberal teachings when they want the happiness of all and the welfare state, or when they make demands such as the reduction of working hours and denounce surplus value, which would lead to a "standstill by suppressing the productive achievements of capital";

"who is concerned with the raw egoism, with envy and greed of persons and classes unscrupulously, should in any case not talk about a socialism that has anything to do with community."<sup>368</sup> The community, as Boehm imagines it on

The "conservative socialism", which is imagined on the basis of economic liberalism and, at the same time, of a corporative organization, now seeks to overcome liberal atomization as well as Marxist mechanicism and state centralism by putting the people first<sup>369</sup> - which, in plain language, means that Victorian corporativism, invoking its own national and spiritual-ethical concerns, seeks to put an end to the "egoism" of the lower classes, i.e. to the mass-democratic and welfare-state tendencies. Corporativism or "conservative socialism" and capitalist rule are here complementary principles. This coupling

was not a rarity within the "conservative revolution. Even for such a rough-legged Prussian and "Prussian socialist" as Spengler, private enterprise remained taboo. In opposition to "idiots" who preached "national communism," he said that socialism was "an ethos, not an economic principle," and that it "presupposed a private economy with its old Germanic joy in

Power and booty ahead"<sup>370</sup>. Also here the top of this "socialism" turns against the eudamonist aspirations. While the decadent English liberalism worshipped success and happiness, the preul3ic socialist ethos was based on Labor and professional community<sup>371</sup>. <sup>1</sup>Direct taxation, expansion of the statebii The socialization of the state is not "nationalization by expropriation and theft" and "not a question of nominal property"<sup>372</sup>, but of administrative technique"; it is, in fact, only to be achieved by "nationalization by expropriation and theft". Socialization was not "nationalization by expropriation and theft"<sup>373</sup> and "not a question of nominal ownership, but of administrative technique"; it would only "fully materialize in decades.

In Jung, even more pronounced than in Boehm, we find the outlines of what was later called "conservative" neoliberalism. targeted references to Tocqueville<sup>374</sup> are anything but coincidental. The criticism of the Mass democracy and the welfare state as inevitable outgrowths of euda monistic liberalism come into focus here even more systematically - and more eloquently - and, as already in Moeller's work, they are linked to the national question.

<The victorious Western powers will be connected with the same bad liberalism represented<sup>375</sup>. Liberalist indi vidua lism mulls after Jung will bring about the anonymous mass rule of the inferior and thus tyranny, by vi:lously destroying pers:inality <by utilitarianism, purpose rationalism, the unrestrained addiction to money, and the detachment from alien ties to the community and to the spiritual values which it has verki:ied:illigated to put in their place atoms held together by a giant apparatus and directed by mass parties and by the equally anonymous powers of money and the press; socialism and liberalism meet and, for all their apparent antagonism, work together because they are both The socialists are of the opinion that socialism is only the "revolutionary reversal of material greed", but not the completion of "materialism".<sup>376</sup>

Jung finds particularly sharp words for the welfare state as it is shaped under mass democratic conditions. If the people become the "cost of the state," then financial policy must be "designed to satisfy the collective mass interest in the welfare state.

<sup>370</sup> Pol. Writings, VII- VIII .

<sup>371</sup> A. a. 0.,37.

<sup>372</sup> A. a. 0. , 263et seq., esp. 275.

<sup>373</sup> A. a. 0. , (95

<sup>374</sup> Dominion247,258, , 260.

<sup>375</sup> A. a. ff.0.,66

<sup>376</sup> A. a. 0., ff40., ff., 224246, ff251,432387., (here the quoted words).

<sup>366</sup> A. a. .0.,60,63,93

<sup>367</sup> A. a. 0. , 73.

<sup>368</sup> Corp ersch. Binding, (36

<sup>369</sup> A. a. 0. , 39.



The "state" and the tax benefits are calculated on the basis of the expenditure of this state.

mammoth state. The result is centralism, a "legislative machine," a gigantic administration and the omnipotence of the civil service.

The state's authority is strengthened by the fact that it is subjugated by the state.

The biocracy is the result of<sup>378</sup> the state's subordination to the interests and demands of various social groups. The biocratization, which not least of all burdens the economy

Jung contrasts this with an economic and social program that envisages a drastic restriction of the state's sphere of activity and, at the same time, a far-reaching disentanglement of state and society. In his opinion, today's state is an obstacle "for the true innovator" and it is wrong to deify it, "to see the renewal of German life always from the point of view of the state" and to want to solve the "question of leadership" by focusing on the structure of society.

is, in a sense, planned out of the state"<sup>380</sup>. The state is given the management of the whole, "but in no way the performance of those tasks which

of the economy"<sup>381</sup>. This means, among other things, dismantling the welfare state according to the motto that the best social policy is education for self-responsibility<sup>382</sup>, rejecting the democratization of management<sup>383</sup> and reducing the number of employees.

of the state's ability to intervene in actions that would actually serve the overall interests of private entrepreneurs<sup>384</sup>; characteristically, this is framed

Jung links these demands to the desire to stop proletarianization, i.e. to consolidate the middle class and help the dispossessed to own property, as well as to strengthen family and community ties as much as possible. He admittedly does not<sup>385</sup> want to admit that through this concept he pays homage to the *liberal* separation of state and society, but he leaves it unclear in what concrete way this separation differs from his "doubling" of people and state, especially since he does not want to be seen as a "double" state.

the<sup>386</sup> independence and legality of the economy and culture are fully preserved.

The real reason why Jung nevertheless does not want to accept the liberal character of the separation between state and society is that he did not want to give the impression that he was talking about the night-watchman state. For him, as for other publicists of his persuasion, the separation of state and society meant not least the dismantling of the welfare state.

m A. a. O. , 502.

<sup>378</sup> A. a. O., ff258

<sup>379</sup> A. a. O. , 439.

<sup>380</sup> A. a. O. , 287.

<sup>381</sup> A. a. O. , (427

<sup>382</sup> A. a. O., (448,451, cf. f302. iiber die Sozialversicherungsfrage.

<sup>383</sup> A.a. (0.,456,Uncling").

<sup>384</sup> A. a. .0 , 479.

<sup>385</sup> A. a. 446, 0.,ff, 21331ff, ff93

<sup>386</sup> A. a. O. , ff291, ff.304

The state, however, should at the same time be able to maintain or create the socio-political conditions for the autonomy of private enterprise at a time when the socialist and collectivist tendencies are being expressed precisely through the legislature.<sup>387</sup>

and the state apparatus dependent on it. The strong or authoritarian state, whatever form it might take<sup>388</sup>, should therefore be the

Parliamentarism or political liberalism could be partially or completely eliminated in order to save the substance of economic liberalism.

The two-sided position of "young conservatism" can be summarized<sup>389</sup>. Just

Because *this* function was intended for the (partial) turning away from political liberalism or from its mass-democratic tendencies, it was accompanied by a simultaneous rejection of totalitarianism: the demand for the authoritarian state was accompanied by the approval of the total state. The strong or "sovereign state," wrote Jung in his late, partly reumii tant attempt to stem the National Socialist wave, could also be achieved without those

totalitarianism", "which is very wrongly considered to be the essence of the anti-liberal spirit".

is praised. Not only the neutral state of the parliamentary system originates from liberalism, but also the full democracy of a Rousseau, which differs little from the modern state in its essence"<sup>390</sup>. Here too, therefore, lies

The rejection of liberalism is based on its equation with democracy. The total state means "Bolshevization", the sovereign state is above all the territories of life, but at the same time it recognizes their autonomy and

The "state capitalism", which could<sup>391</sup> endanger the right and freedom of the individual and the value of personhood as understood by Christianity. Even earlier Ziegler polemicized against the total state precisely on the grounds that it was the further development and completion of Jacobinism and „"Western" national democracy; because of its origins, it would ultimately be unable to realize anything other than statism and bureaucratization; the state established in the wake of L. v. Stein and the German cooperative tradition would not be able to achieve anything else.

<sup>387</sup> See also Schone, Neuer Staat, esp. 22, 9,1 cf. v. Papen's words quoted on p. 124. Schotte is aware of the objection that his view could also have been called liberal. To this he can only reply that conservatism also affirms the freedom of man and the responsibility of the individual, even if the duties of the individual are founded in Christianity (97).

<sup>388</sup> Knoll, author, informs about the different ideas about this. State, ff214

<sup>389</sup> Gerstenberger saw this correctly (Revol. Konserv., 146f. ); later, however, she relativized this interpretation (Konserv. in der Weim. Rep., (338).

<sup>390</sup> Interpretation of meaning, f99.

<sup>391</sup> A. a. 53 0.,f., 89, 52, 66. Cf. the critique of National Socialist practices, esp. 91, 50, 69 (mass party, clarification of labor and egalitarianism, Gleichschaltung, etc.). ). The same motifs are found in the speech drafted by Jung and delivered by v. Papen on 17.6 . in 1934Marburg, esp. f546., ff.552

The authoritarian state, however, would be able both to preserve the autonomy of the political and to make the economy function in such a way that it could hold its own in the world economic struggle<sup>392</sup> (which practically meant freeing it from the burdens of the welfare state). The separation of state and society is openly assumed here, but under the existing crisis circumstances the state gains considerable weight as the bearer of political decisions vis-à-vis society, whereby the farewell to the night-watchman state appears in<sup>39</sup> the perspective of anti-Western affect as a farewell to liberalism altogether.<sup>3</sup>

The Janus face of „Jung conservatism“ has not gone unnoticed by contemporary observers. Muralt drew attention to the "internal contradiction" of the Neumann drew attention to the "Ring" movement, "insofar as it sets up a strict authoritarian regime as an ideal in the political sphere, but sublimates free ownership in the economic sphere and thus pays homage to the liberalist principle of

laissez aller";<sup>394</sup> one could therefore not escape the impression that its sociopolitical program "amounts to the one-sided favoring of employers. Neumann saw this inner contradiction personified in Hugenberg; he "showed a ...peculiar mixture of the civil servant, for whom the primacy of the state over the economy is self-evident, and the free entrepreneur, who, far from having a governmental attitude, can also act independently and at a distance from the state. Even if any entrepreneurial behavior is alien to him, he is generally regarded as an entrepreneurial representative and an enemy of social policy"<sup>395</sup>. "Conservative revolutionaries" such as Zehrer, who <through *their* authoritarian state> have created the "oligarchy of property . . . through their authoritarian state," wanted to<sup>396</sup> carry out national renewal "at the expense of the capitalist economy," and wanted to couple the dictatorship with an anti-capitalist stand organization, were naturally not stingy with eloquent turns of phrase when it came to denouncing the entrenchment of "young conservatism" in liberalism. Conservatism, Zehrer noted, has been in a state of decline ever since the

19. Therefore, after the liberalization of conservatism, the connection between nationalism and socialism, as it was established by the front generation, can no longer be called conservative. But also industrial right-wing liberalism of Hugenberg's pragmatism, which has adopted liberal methods and aims in every form and is distinguished only <by a

<sup>392</sup> Author. or tot. State, esp. 23 ff., 41.

<sup>393</sup> Jurists like C. Schmitt and E. Forsthoff, who did not pay enough attention to the social, economic and ideological aspects of the problem of the state, used the term "total state" to argue in favor of the authoritarian state - a mistake that they themselves realized; see the analysis by Maschke, Leviathan, esp. ff231. Cf. above chap. I, note. 91.

<sup>394</sup> Muralt also found contradictory the simultaneous "Jungconservative" appeal to nationalism, which must be based on the masses<sup>3</sup>, and conservatism, which must not get involved with these same masses (291).

<sup>395</sup> Parties, ff69.

<sup>396</sup> Stage Bruning, 165, 168; Collapse, 422.

The new style, which is characterized by a sharper emphasis on the national, no longer ...has many conservative elements. It has been absorbed into liberalism. The same applies to the direction of v. Gleichen, with all its emphasis on the authoritarian state and patriotism. Even if these ideas and methods seem difficult for liberalism to bear ... On the other hand, it is economically exonerated. For the economic form of this form of state is convincingly private-capitalist The conservative character of state leadership corresponds to a markedly liberalist character of economic leadership<sup>397</sup>.

Zehrer's justified observation that conservatism had merged into liberalism was, of course, hidden behind the nationalist and authoritarian turn of radicalized biberarianism caused by the history of the times; however, it emerged unexpectedly where this turn was not taken - and then the outline of the later "conservative" neoliberalism emerged most clearly. Ullmann, for example, distanced himself from both main components of Hugenberg's program, i.e. Ullmann, for example, distanced himself from both of the main components of Hugenberg's program, i.e., both from unbound private property and from the "activism of the apparatus," and by arguing for the social obligation of property as well as for "civility and urbanity" in political life, he wanted to see the "opposition of genuine conservatism and genuine liberalism dissolve into [a] higher political unity"; his criticism, like that of the "young conservatives," was directed at eudamonic and extremely individualistic liberalism<sup>398</sup>. In the same direction, Quabbe's demarcation against mass (democracy) and the zigzag-less progressivism in

<sup>397</sup> 15 Commentators who criticized the tactical interaction of the „young conservatives“ with the post festum national socialism reached similar conclusions, albeit on the basis of different premises and in different formulations. Rauschning spoke of the "unfruitful combination of an anti-liberal, popular outlook with an extremely liberal economic view" (Revol. d. Nihil., 183). The conservatism of the Weimar period had degenerated into a "bastard form of nationalist liberalism and a bürgerlich temperierte policy of violence" (195). The economic powers behind it, however, "did not want revolutionary dynamism, but only the methods and political means of dictatorship. The "order" created by national socialism captivated them and blinded them "to the fundamental difference that exists between the motives for which those reorganizations in the

The polemics of national social theorists against "young conservatism" seemed to confirm this description of the situation.<sup>177</sup> The polemics of national-socialist theorists against „young conservatism" seemed to confirm this description of the situation. As Beyer wrote in a highly interesting work, it was above all the

The "young conservative" conception of the neutral state was liberal in character, as was the attempt to ensure the freedom of society from the state. The related opposition between an authoritarian and a total state was itself unfruitful, for "between complete nationalization and an authoritarian self-determination of the state," the third possibility was the connection of state and people through a "popular leading order"; in any case, the assumption that the state took precedence over the party was untenable (Ständeideologie, ff99., 239).

<sup>398</sup> The rights, esp. ff7., ff10.41., 44.



The result is a simultaneous mingling of liberal individualism and Christian personalism<sup>399</sup>. Even more vividly, Diederichs' "Politics of Gei

s te s". Diederichs thinks little<sup>400</sup> of the "biirocratic authoritarian state" and of the "all-German chauvinism," and instead he admonishes the bourgeoisie to break away from materialistic and egoistic thinking, to renew oneself and The aim of this work is to promote the development of the economy and to place<sup>401</sup> it at<sup>402</sup> the service of the community.

Civilization is opposed to the elite, aristocracy and culture. The root of his concept is, as he says, the "liberal ideal of the intellectual individuality of the The "individual," the "conservative ideal of organic legality," and the "socialist ideal of community," the crown of leaves<sup>403</sup>. This is sealed

Overcoming mass-democratic materialism, eudamonism and economism by putting spiritual values first, among other things by remembering the great social task of art<sup>404</sup>.

However, even via right-wing liberal auto-ritarism, there have been paths leading to the

This is shown, at any rate, by the ideological development of Miiller-Armack, who went from being a full-fledged fascist and National Socialist to being the spiritual father of the Federal Republic's social market economy. That authoritarianism aimed at eliminating "„mraxicalcollectivism" and at the same time liberalism in the bad sense of the word, i.e. economistic, eudamonistic and mass-democratic. The latter was to be achieved by tying economic activity to higher goals, so that the narrow "egoism" of economies (i.e. the blind desire for profit without regard for the common good on the part of employers as well as social demands without regard for the state of the economy on the part of employees) could be overcome and fruitful community could be substituted for lame antagonism. The authoritarian state was now the authority that was to play a decisive role in this overcoming of economistically oriented (bad) liberalism by enhancing the value of the political (and the higher communal goals associated with it by definition) over the economic. The superiority of the above-mentioned goals, however, does not necessarily have to appear as the primacy of the authoritarian-political over the economic; it can just as well appear - in the case of a politically weak state - as the thesis of the primacy of Christian or moral values over egoistic eudamonism and the root-liberalism.

<sup>399</sup> Tar a Ri, ff,116 ff131

<sup>400</sup> Politics of the mind, ff61,63

<sup>401</sup> A. a. 0.,171,196,185.

<sup>402</sup> A. a. 0.,50.

<sup>403</sup> A. a. 0. , 38,39.

<sup>404</sup> A. a. 0.,194.

In both cases, the enemies remain identical: collectivism and (bad, mass-democratic degenerated) liberalism.

This transition is noticeable, as I said, in Miiller-Armack's ideological development, which is adapted to the circumstances of the time. According to his own statements, he had already come to the idea of a simultaneous overcoming of Marxism and liberalism through the 1924 experiences of Italian fascism. In <sup>405</sup>1933, he advocated this overcoming by means of the primacy of the political, i.e. the National Socialist state, and drafted an economic model in which "individual entrepreneurial initiative is preserved" but is to<sup>406</sup> serve the goals set by the state. Here a field is opened up for free initiative, not in the sense of a sphere of freedom opposed to the state, but as an area subordinated to the state, the right of which is<sup>407</sup> derived from its function for the whole. The corporative structure would mediate between the state and the economy and thus make political liberalism, i.e. representation by parliament, superfluous; In <sup>8</sup>1948, Miiller-Armack again stressed the importance of the political against liberal economism, but this time he held it back and also linked the political with the moral, recalling the social duties of the state and the moral factors of economic activity; the goal, however, remained to overcome individualism and collectivism at the same time.<sup>40</sup> and the "social balance" as well as the "scope for personal development".

initiative of the entrepreneur<sup>409</sup>. Only a year later, the emphasis on the political is further weakened, and it is replaced by a non

The moral, in its current connection with the defense against communist collectivism<sup>410</sup>, is becoming more and more the economic factor. The overture of Miiller

Armack's attitude toward neoliberalism is completed by the appropriation of Ropke's intellectual-historical analyses. While in 1933 he celebrated the defeat of relativism by "the new idealistic historical attitude of the German movement,"<sup>411</sup> he mourned the 1948 decline of faith and the breakthrough of nihilism.

<sup>412</sup>The new system is based on the principle of the "National Socialism".

<sup>405</sup> Idea of the state, note. 11,1.

<sup>406</sup> A. a. 0., ff, 2341, f47

<sup>407</sup> A. a. 49.0.,

<sup>408</sup> A. a. f0.,52.

<sup>409</sup> Jahrhundert er t, esp. 183ff, 199.

<sup>410</sup> Di ag nose, esp. ff,280 ff304

<sup>411</sup> Idea of the state, ff28

<sup>412</sup> J ahrhundert, 118ff, ff139. On Ropke, cf2. ch. I, para.



## 4. The scattered legacy of conservatism

### *a. The corporate idea*

We know that classical conservatism of the nineteenth century invoked the idea of corporatism with the aim of shackling the developing industry to feudal immobilism, and thus to prevent the social and economic development of the country.

To maintain the<sup>41</sup> primacy of land ownership.<sup>3</sup> This plan failed or

On the contrary, it has never had a chance to be realized even tentatively. A sign of the increasing surveillance of the corporative idea during the parallel rise of the nobility in capitalist society is its gradual detachment from the principle of hierarchy.

While it was self-evident in the practice of the *societas civilis* and in the theory of classical conservatism that the corporate organization had to reflect and consolidate the existing social hierarchy, with time the professional-technical aspect gained in importance among the corporativists, which, of course, indicates the influence of the

economic priorities of capitalist society, which in the meantime had become significant. This development, in turn, goes hand in hand with the fact that the corporative idea is increasingly linked to political currents that neither emanate from nor serve the nobility. If Ketteler's Catholic social doctrine still emphasized the necessity of hierarchical-status differentiation, Hitz considered his stance or corporations to be fundamentally equal and justified among themselves, and, moreover, he allowed the state much greater leeway in economic life than Ketteler. No less significant, however, with regard to the demise of the corporative idea under the conditions of the prevailing capitalism is Hitz's dispute with Herding, who, although he wanted to alleviate the inequality and injustice of economic liberalism through a certain corporative organization, fundamentally approved of it as an indispensable framework of social progress; Hitz finally had to adapt to the pragmatic policy of the Center<sup>414</sup>.

When the corporate idea again came to the political fore, it was for the opposite reason to that of classical conservatism in the 19th century. Now it was no longer a question of keeping the growth of capitalism within acceptable limits, but rather of stabilizing a capitalism stuck in crisis on a new basis and giving the bourgeoisie a chance to continue to steer state and society either in a changed, i.e. no longer purely private capitalist role in the old sense or in a new ideological-political guise. In this context, the corporate idea could prove helpful in some respects. First of all, the right

The internationalists of the twentieth century were already nationalists because their socialist-communist arch-enemy carried out his activities under the banner of internationalism - no matter how this word was interpreted and in whose interest it was used. The internationalist idea, which was charged with class struggle, could only

<The class antagonism is only secondary, or even apparent, in view of the strength of the national bond, which binds rich and poor with equal firmness and strength.

and to solidarity with a view to higher common standards.

The corporate idea, i.e., the notion of harmonious cooperation between the very people whom the left portrayed as unconcilable enemies, was supposed to be the most convincing proof of the social and existential superiority of national unity over all the "materialistic" and "egoistic" views of the individual classes. Beyond this, however, it was tantamount to an admission in bourgeois circles (at least in times of crisis) that the days of pure private capitalism and the old-style entrepreneur were now over, and that after the replacement of the family business by cartels and trusts, new forms of organization were needed in the economy, especially since managers and trade unions had appeared in the new situation as factors of production in a completely different sense than before. Behind this understanding, however, there were very different or even opposing intentions. Entrepreneurs with visions and broader ambitions, like Rathenau, or managers with class consciousness (if one may say so), like Moellendorf, were in fact looking for new, crisis-proof and socially solid post-capitalist organizations.

The economic development of the time, although they did not want to<sup>41</sup> abolish the autonomy of their professional corporations or the entrepreneurial initiative, remained on paper, even though the subsequent economic development of its own dynamics produced some things that resembled those of the time.

anticipatory designs. But there were also bourgeois-capitalist circles which represented the corporative idea in the same breath as orthodox economic liberalism, and this paradox could only be explained by the intention to save economic liberalism and bourgeoisie in its hitherto social function through the crisis period with relatively minor and more ideological propagandistic than actual sacrifices. Accordingly, the general political rather than the specific economic-technical aspects of the corporative idea were emphasized. Against the Bolshevism", the nationalist component of corporatism just described was raised; against (political) liberalism, the advocates of an authoritarian regime advocated corporatist organization, because this would have supported parliamentarism, i.e. universal, equal and equal rights.

<sup>43</sup> See above section of this2 chapter.

<sup>414</sup> For more on these disputes, see. Bowen, German Theories, 105(, ff.108

<sup>43</sup> In addition a. a. O.  
, 208.

The government of the country, however, would not be able to use the secret ballot to form a parliament and a majority government in favor of a partial and actually unequal election (because it is tied to a specific profession). Moeller van der Bruck, for example, stated this decisive political consideration in no uncertain terms. If the Revolution attacked parliamentarianism from the point of view of rates, he thought, it would be attacked by the conservatives with the point of view of status; "above all, the point of view of status remained the most important one. is directed against the parliamentary state. It does not exclude popular representation ... but it excludes party rule"<sup>416</sup>.

Heller was therefore not mistaken when, in a perceptive polemic against the Weimar right, he said that the construction of the "Standestaat" was an "apparently democratic arrangement that was intended to serve the demand for dictatorship. Although its adherents appeared to oppose the lame interventions of the birocratized state and defended the free activity of social forces, "in reality their attack is directed not against the extension of state administration but against the extension of state legislation into the socio-economic sphere," that is, specifically against the welfare state and mass democracy, together with their egalitarian concomitants. The "representatives of the corporate ideology", however, knew very well that "in the democratic way no political unity emerges from economic interest groups, but class struggle in permanence". By this remark, Heljer put his finger on the sore point of the corporative concept and at the same time substantiated his conviction that the latter would serve merely as a facade, behind which there would be a strengthening of the state with quite different intentions than, for example, that desired by the Social Democrats.<sup>417</sup>In fact, no corpo rative draft offered a satisfactory solution to the central problem of relations between the state and (basically autonomous) corporations. No one, on the other hand, denied the existence and importance of the problem (although many avoided it), and this in itself was an eloquent indication of the final departure from the world of thought of classical conservatism, even when its concepts, such as the concept of corporation, were once again the focus of interest: for not for it, but for liberalism, the definition of the boundaries between state and society was a real problem, given the basic assumption of their separation. It was, moreover, exacerbated rather than concealed by the desire to replace the night-watchman state with the authoritarian one - and it was exacerbated precisely because the right, despite all its demarcation from political liberalism, did not want to surrender the autonomy of society. However, there was no way out of their dilemma.

<sup>416</sup> Third Reich, 166( A good summary of the scandicorporate concept. tes of the ring and deed circle offers Beyer, Standeideologie, ff.64

<sup>417</sup> Rule of Law, 20-22.

out . For against the "bad" liberalism it had simultaneously offered the co rpo rative thought *and* the authoritarian state, which, however, in polemical intention mutually supplemented each other, could not logically be reconciled. Two prominent examples suffice to demonstrate the vagueness of the corporatist proposals in this crucial respect. For Maurras, the national aspect of the corporative idea mentioned above remains fundamental. In the "corps de metier" the "dirigeants" and the "managers" meet and come to an understanding. diriges", and all human factors of production feel themselves as members of the "diriges".

The same nation, which <sup>418</sup>is fighting its antagonistic interests for the sake of the international competitiveness of the national economy. The The anti-parliamentary point was again reflected in the superstructure; within the corporation, the members of the national community would cast their votes on issues that they understood from their own experience and whose treatment they could also influence, while in the **parliamentary** elections the exact opposite would happen; the universal suffrage would thus continue to apply, but through it a representation and not a government would be elected<sup>419</sup>. It seems now as if the independence of the government from elections etc. would mean eo ipso its superiority over the corporately constituted society. In fact, Maurras sometimes shows stronger sympathies for the political leadership in the state, but these are not supported by the institutional framework of his social design. The nation is structured corporately and hierarchically, but it remains unclear what the status and function of the state is. Is it the apex of the hierarchical order or rather the force that holds this order together from outside? Does it coincide with the nation as the sum of all corporations or does it represent a separate, qualitatively different entity? If it is the latter, how can it be prevented from subduing the corporations by voluntaristic interventions? And if it is not, who will preserve the hierarchy between the corporations and nip their struggle against each other in the bud?<sup>420</sup> Maurras gives no answer to these questions, and the institutional framework within <which they could be clarified remains undefined, especially since his state does not meddle too much in economic affairs and also be financially dependent on the company or corporations s011<sup>421</sup>. In contrast to him, Spann at least poses the problem straightforwardly and recognizes that the self-determination of the Stancle would mean "anarchy" without their integration into the whole, therefore a strong state power would be necessary.

<sup>418</sup> Mes Idées, Lill,221, LV.

<sup>419</sup> Enquete, 324(, cf. f540.; Mes Idées, 167.

<sup>420</sup> Cf. Weber, Action Fran aise, ff, f216522.

<sup>421</sup> See above section 3c of this chapter.

requirement of the state<sup>422</sup>. But when Spann comes to the concrete determination of the relations between this strong state power and the "estates", he merely declares that this determination is not "today's concern"; instead, he formulates two frameworks, which again do not make clear what the power of the state is based on and who should be the final authority in conflicts between the state and the "estates". On the one hand, he allows the "completely autonomous „economic estates" to "exclude" the "centralist state" from economic life; on the other hand, he emphasizes that the power of the state is not derived from the elements of society, but forms a state of its own, "a head of state who, together with his representatives, the entire representatives of the estates, regulates those matters which are of the state, and these alone"<sup>423</sup>. But who determines what is of the state? The state itself or society?

Spann's perhaps extreme example shows very clearly how kiinstlich and cerebral, one might say, the revival of the corporative thought

away from all real social tendencies and without a concrete social carrier

Its absence in Spann's work is compensated for in an unfortunate way by the recourse to the Middle Ages and to Platen, precisely at the points where structurally important questions are at stake<sup>424</sup>. Precisely because the corporate idea of the rights of the 20. century was basically a kiinst program without significant social riickhalt, <las invented rather than rediscovered in the struggle against "bad" liberalism and parla mentarism, it could achieve almost nothing in the sense of its advocates when movements came to power that had used it propagandistically in their anti-parliamentary campaign. Nor were the aporias just mentioned solved, for the simple reason that the actual organization of power relations left no room for similar aporias: the corporations were, after all, so weak, even partly fictitious, that the problem of their relationship to the state did not seriously arise. They were used merely to discipline workers, or sometimes employers, to achieve goals set for the nation by the state, i.e., the political leadership. This, by the way, was soon pointed out by publicists who saw no reason in the experience of Italian fascism to conclude with Maurras<sup>425</sup> that the corporate state had finally come into being. Thus Heller z. In his aforementioned polemic, for example, Her mens pointed<sup>426</sup> out the primacy of the state and the party under fascism even more sharply. The corporations in Italy, he wrote, are not organized according to strictly economic

<sup>422</sup> The true state, 241.

<sup>423</sup> A. a. O., 287f.

<sup>424</sup> S. e. a. a. O., 229.

<sup>425</sup> Mes Jdees, LXVII.

<sup>426</sup> Rule of law, 22.

They are not formed on the basis of any criteria, but they have to profess fascism, have their statutes approved by the state, have the election of their leaders dependent on the will of the higher authorities of the fascist party, etc. In short, "the leading layer of today's Italy was formed by the fascist party, not by the economy. In short, "the leading layer of today's Italy was formed by the fascist party, not by the economy . . . Behind the standard appearance of the corporate state appears the party-state. The difference between the Italy of today and the parliamentary democracies is therefore not that between the corporative state and the party state, but between the multiparty state and the one-party state." Fascist publications cited by Hermens repeatedly emphasized the primacy of the party and of politics<sup>427</sup>.

The development of the National Socialist regime was no less clear.

Germany. In general, what Rauschnig wrote about Dami's measures for the organization of the "Reichsnahrstand" is probably true: they "are not new self-governing bodies, not corporations, not integration forms, not organs and members of the state - they are apparatuses of domination, of the "Reichsnahrstand". Propaganda, surveillance, terrorist control".<sup>428</sup> . The sub

<sup>429</sup> National Socialist authors such as Frauendorfer, for their part, left no doubt about the priorities. Even if the corporate organization of the economy was affirmed in principle, it was emphasized at the same time that the economy thus organized had to obey politics; Stancle were economic representations that had nothing to do with the political one. While internal tensions and partial interests burdened the functioning of the corporate economy, the National Socialist leadership would be able to make „its decisions unhampered by petty economic considerations. The fact that the class comprised only "a part of the ties of the individual" already indicated that the National Socialist state was not a class state, for it also controlled politics and culture, thus also exercised "supreme supervision over every class activity"<sup>4</sup> and could therefore "repeal or change decisions of the class organizations. Beyer argued even more radically and systematically a few years later. The adherents of the class idea had believed that they could not only eliminate the class struggle, but also overcome the previous political order by rejecting parliamentarism and the party system. Catholicism, in particular, had seen the possibility of a The Church was seen as "the best guarantor against tight political leadership and for the uninhibited influence of the Church in this depoliticized political sphere.

<sup>427</sup> Parliamentarism, f483,484.

<sup>428</sup> Revol. d. Nihilism, 62.

<sup>429</sup> For details, see Cole, Corpor. O rganiz. , esp. ff.455

<sup>430</sup> Stiindischer Gedanke, 22, Two 24,26. years later (1935) Frauendorfer emphasizes the primacy of politics even more emphatically, see Idee und Gestalt, (30

In the view of the head of the party, the purpose of the standish theories of the state was "ultimately to dissolve all powerful political leadership," especially since they had never explained how social diversity could be reconciled with unified political leadership. From the very beginning, National Socialism had held the view that stancle

The ideology of the state wanted to grant the state the right to intervene only in cases of dispute. This attitude was ultimately based on the liberal divorce of state and society, which consistently anti-liberal National Socialism abolished at the same time as the opposition of state and class by submitting both state and society, state and class, equally to the leadership of the movement, i.e., to the party. It<sup>431</sup> could hardly be said more clearly that the elimination of liberalism was reserved for other forces than the representatives of the corporative idea and that solutions from the ideological arsenal of classical conservatism no longer had any history-forming power.

### *b. Cultural Criticism and the "Left"*

For all the importance of the motifs of cultural criticism in today's literary and political debates, we need not dwell long on them, since their conceptual structure and intellectual-historical origins are well known, although few of the modern critics of culture are clear about them, and although previous research has not done everything possible to elucidate the extremely widespread influences and interactions of these motifs across the most diverse political and ideological currents. After all, the essential similarities between the conservative and the socialist critique of capitalism have long been noticed, and the common anti-individualist attitude of the two enemies of bourgeois liberalism in the nineteenth century has also been pointed out. The rejection of individualism in favor of a communal ideal - no matter how this was defined in each case - has long been noted.<sup>432</sup>

- was associated, of course, with the rejection of the separation between private and public, legality and morality, citizen and man, which resulted from the disintegration of state and society. When Stahl, for all his hostility to socialism as a consistent liberalism<sup>433</sup>, praised the socialist critique of the laissez-faire principle and the individualist concept of property, as well as the socialist adherence to association and corporation, he at the same time recalled that socialism, like conservatism, was as much about the social and the social as it was about the social.

<sup>434</sup>In fact, socialism, in so far as it sought the anthropological underpinnings of its socio-political demands, arrived at monistic structures, i.e., at the ideal of the unified human being, which in turn can only be realized within a community free of all divisions. This monistic ideal, of course, was not simply the already existing conservative thought structures, but rather resulted with logical necessity from the rejection of the liberal dualisms on the level of social theory and anthropology. On the other hand, the simultaneous rejection of the conservative idea of hierarchy and the affirmation of the principle of equality left certain elements

of liberal individualism within the socialist humanist ideal, although the boundaries between the individualist and collectivist components remained vague and shifted in one direction or the other according to the respective ideological needs.

were.

The democratic or socialist condemnation of the working and living conditions in the emerging industry is not much more different than the conservative one, and arises independently from an elementary rebellion against injustice, which as a rule remains alien to the related conservative anti-capitalist positions. The conservatives, however, have an intellectual-historical advantage in that they were the first to base their critique of those conditions on a worldview and anthropological foundation, since they had an old conceptual framework that had already been considerably refined and specified in the polemics against the Revolution in the first years after 1789. In this systematic foundation and coherence, the conservative critique of capitalism could have an effect beyond the conservative camp and influence socialists, regardless of whether they knew the origin of the anti-capitalist ideas or not. In this intellectual-historical constellation, the young Engels was able to

z. In his description of the situation of the working classes in England, for example, Marx was able to copy Carlyle without inhibition, although he made no secret of the contrast between his socio-political goals' and those of the Englishman. At the same time, when the young Marx was theorizing the critique of capitalism that began with the denunciation of industrial misery, he worked out - admittedly on the basis of his own anti-bourgeois presuppositions and without direct reference to conservative thinkers - primarily two motifs that were also at the center of analogous conservative theorems. First of all, he emphasized the far-reaching depersonalization of human relations under capitalism and saw in money the blind, though in its own way rational, power that partly drives, partly pushes, and partly seals this depersonalization.

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<sup>434</sup> The opposing parties, ff.275 ff.282

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<sup>431</sup> Stand ideologies, 322326et seq. 331,338.

<sup>432</sup> See, for example, Lenz, *Agrarlehre*, passim; Below, *Deutsche Geschichtsschr.*, esp. 171; Mann heim, *Konserv. Thought*, 429,441.

<sup>433</sup> o. ch. III, sec. sa.



who deplore this power of money, he continues decades later in the Capital. Secondly, in view of the autonomization of the sphere of needs, i.e. of the new bourgeois society, established by Hegel, he opposed the associated division of man into bourgeois and citizen, the connection of which with the aforementioned general depersonalization of human relations is obvious. Both basic aspects of the alienation process, in turn, could only be meaningfully judged as suspicious for the essence of man from a monistic anthropology and conception of society, which he also set forth shortly thereafter in the "German Ideology". Man, who is unified in himself and at the same time multidimensional, lives free of the divisions of the bourgeois subject within a community, which for its part does not know the separation of state and society, the political and the social, the private and the public, and so on. And still a third thought, which we encounter above all in the "Grundrisse", connects the Marxist critique of capitalism with the conservative one. The liberating attempt at demystification and demythification ends with the statement that behind money and commodities, and behind what the bourgeois national economists present as the objective law of the economy, there are concrete human relations, so that the respective form of economic activity is a function of these relations, on which it depends.

The similarities between socialist and conservative critiques of capitalism, ranging from the cultural and anthropological to the exploitation and crisis theories, are already difficult to reconstruct on the basis of our discussion of the conservative views in this regard, and therefore it is not necessary to pay attention to them. The cultural and anthropological aspect, which is of primary interest to us here, was suppressed during the last decades of the nineteenth and the first decades of the twentieth century<sup>20</sup>. On both sides - on the conservative side because of the progressive identification of the nobility with capitalist society, and on the socialist side because of the long domination of social-democratic scientism and positivism. When this aspect was rediscovered by socialists after World War I, in the meantime thought motifs had found their way into it that had been formed by aestheticizing intellectuals. From the point of view of intellectual history, Simmel's "philosophy of money" forms a melting pot in which, among other things, the older Marxist and the newer aestheticizing critique of capitalism and culture merge. A close examination of the structures of thought and the terms used could prove that the debt of Lukacs' "History and Class Consciousness" to Simmel's analyses was quite considerable, even decisive in certain respects. Given the intersection of Marxist and aestheticizing motifs in Simmel's cultural critique, it must also be considered symptomatic that Lukacs had already passed through a strongly aestheticizing phase when he appeared in the capacity of theorist of an anthropologically based socialist critique of capitalism. This thought structure, enriched by a few existentialist and "critical" thoughts, has the

This was the general ideological basis of cultural criticism, which served as an ideological frame of reference for certain left-wing political intellectual movements in the U.S. and Western Europe in the 1960s and 1970s. In the meantime, however, not only the conservative origins of cultural criticism had been forgotten or suppressed, but also the intensive use that intellectuals of the right had made of essential themes of the ideologically and anthropologically based critique of capitalism and culture in the period between the two world wars. In our own day, many "conservatives," many of whom worshipped the golden calf during the euphoric years of economic growth, felt compelled to consider such questions in greater depth only under the massive pressure of leftist cultural criticism. They were partly prepared for this by the preceding neoliberal polemics against mass-democratic "materialism," etc., and they were soon able to remember the conservative history of cultural-critical thought motives, so that they did not have to pay a debt of gratitude to the left. It was all the easier for a cultural critique adapted to "conservative" liberalism to become acceptable when, after the initial surprise or panic, it turned out that it was not only largely harmless in sociopolitical terms, but could also serve as an ideological safety valve and absorb some dissatisfaction with relatively little in the way of concrete compensation. The fact that the New Left appeared in the first place under the banner of cultural criticism was, moreover, from the very beginning an unmistakable indication of its inability to threaten the sociopolitical basis of the "system. And not only did it not do so, but it also contributed considerably to the questioning or destruction of any socialist orthodoxy. Socialist orthodoxy, in both its social democratic and communist versions, had always adhered to the theorem of the development of productive forces as the basis of social progress, and had seen in it its own distinguishing feature from classical conservatism, despite all the similarities in the critique of capitalism. As the New Left gradually distanced itself from this theory in order to devote itself to ecological questions, etc., it also lost its specific socialist character. The new search for "nature", in whatever form, partly revived some of the arguments and forecasts of the representatives of the desk class conservatism, who, in the spirit of the grounded aristocracy, declared life in the open air and warned of the fatal consequences of industrialization, although the intellectual-historical background of such views was not perceived and also although these latter are today mixed with all kinds of exoticisms, primitivisms and occultisms. The search of the (former) New Left for "nature" is ultimately financed by the Obeschiissen of the industrial society and does not represent in itself a danger for the "system". The real enemies of capitalist liberalism do not think in terms of cultural criticism or ecology, but in political and militaristic terms. A careful reading of the polemics coming from the Eastern bloc against the theory and practice of New Leftists and economists is truly instructive.

In the previous section of this chapter we have already warned several times against confusing the conservatism of the 19th century with the right of the 20th. The essential historical and social difference between the two is that the right has come on the scene with the aim of defending *das bürgerliche Eigentum* and economic liberalism in general, which classical conservatism had fought so fiercely in its day. This defense is again undertaken *by* authoritarian means, but at the same time on the basis of the separation of state and society, also fundamentally rejected by classical conservatism, so that the state is reserved *the* monopoly of the political, while society may indulge in its economic and other activities at least to the extent that these do not touch the political authority of the state. Now, the separation of state and society understood in this way can prevail at different stages of post-feudal social development, and the physiognomy of the political authoritarianism of the right is shaped accordingly. Sometimes the state is opposed by a society that is led by a strong and traditional bourgeoisie, even though it cannot (for the time being) master the political situation for certain current reasons. In other cases, the society is dominated by landowners working on a capitalist basis, or it consists mainly of a (relatively) weak bourgeoisie and a mass of smaller proprietors, e.g. self-employed peasants, who fear the loss of their property no less than the bourgeoisie's dependents. As the experiences of this century in Europe, Asia, and Latin America have made clear, the authoritarian rule of the right can serve several functions, from stabilizing the social position of an already economically strong bourgeoisie to creating the institutional framework for modernization and industrialization by capitalist means, excluding all socialist experiments to that end. Either way, however, certain basic features remain stable. Since private property and economic liberalism, at whatever level and in whatever form, are to be protected by authoritarian means against the left, the programmatic anti-...: communism of the Right consists of a series of principles which actually represent a reversal of communist slogans: in place of class and internationalism comes the nation and patriotism, in place of universal emancipation the traditional patriotic scale of values, in place of (pacifist) humanism *das* heroic ideal of life, in place of collectivism freedom - and vice versa: in place of anarchic individualism social discipline and in place of political liberalism authoritarianism. The ideological principles are not always logically or historically related to the objective social function (we already encountered the same asymmetry in the "conservative revolution"),

However, they are polemically indispensable, and therefore the danger of ideological hypertrophy and hollow rhetoric must be accepted. In contrast to the conservatism of the 19th century, the right of the 20th century must hold on to the separation of state and society, because the danger of the development of private property and economic liberalism is connected with a reopening of this separation. Either the separation of state and society disappears as a result of the imposition of a collectivist or totalitarian regime, in which state and society obey equally the dictates of the ruling party, or it becomes blurred within a parliamentary democracy, in which the state becomes the enforcer of the wishes of certain social groups, and in fact - which is the main concern of the right - the bearer of left-wing social policy with the restriction of existing property rights. The separation of state and society, as envisaged by the Right, must therefore be accompanied by a strengthening of the state, which would enable it, in possession of the political monopoly and with unquestioned authority, to resist any pressure from social forces, both collectivist and mass-democracies. The extreme strengthening of the political authority of the state ends with the establishment of a dictatorship, that is, with the abolition of parliamentarism and political liberalism. The characteristic feature of the right consists precisely in its programmatic readiness to eliminate political libertarianism in order to preserve *das* private property and economic liberalism against leftist attacks *intake*. In this sense, the right is related to liberalism, no matter how much some "enlightened" sections of the left may be ashamed of this relationship. In no case, however, should the historical or sociological analysis confuse the extent and intensity of the violence used by a dictatorship with the social character and objective function of that same dictatorship. Such optical exchanges are usually made by those who, in the course of the contemporary "left-liberal" tendency, see liberalism not as a concrete historical, but as an abstract humanitarian, "social" dictatorship.

Category.

The right-wing dictatorship, by coming on the scene to defend already existing property rights, and thus acting on behalf of the holders of these rights, openly or tacitly, remains a provisional dictatorship, which opposes the danger of a revolutionary sovereign dictatorship overturning the existing. The counter-revolutionary conservatism, however, wanted to give its dictatorship a commissarial character, and from this arises an analogy of the counter-revolutionary Right to it, although the latter professes social and economic principles which the latter considered downright revolutionary. The analogy can be deepened if we recall<sup>435</sup> *das* mistrust of the nobility in general against the dictatorship as such, which in the

<sup>435</sup> See above ch. m, sec. 3d.

The fear of a "revolutionary" absolutism, even when it saw no practical way out other than dictatorial action, made the nobility retreat. Just as the fear of the sovereign dictatorship of a "revolutionary" absolutism made the nobility hesitate even when they saw no other practical way out than dictatorial action, so too the frequent indecision or rejection of (large parts of) the bourgeoisie against the right-wing dictatorship stems from the suspicion that it could, under certain circumstances, pave the way for a totalitarian one.<sup>436</sup> Which mood and conception or which group prevails within the bourgeoisie depends on the respective situation as well as on the general historical physiognomy of a country; it also happens that militaries acting on their own, for *example*, take the qu[ua] of decision from the bourgeoisie and usurp the power of government in order to then offer their good services in expectation of certain quid pro quos. Criteria can at least be established for judging the extent to which a right-wing dictatorship is on the road to totalitarianism. A sure sign of such a tendency is its willingness to blur the boundary between state and society by relying not primarily on the existing state apparatus but primarily and preferably on a mass organization that subjugates state and society equally to its will or to the will of its leaders. In the short or long term, this is as fatal to liberalism as comprehensive economic planning or, at any rate, the rigorous steering of private initiative in the sense of purposes no longer determined by the economy itself but by the political leadership of the state. With regard to these criteria

If authoritarian regimes such as Franco's and Salazar's, for *example*, or the corresponding Latin American military governments, with all the possible addition of plebiscitary elements, can be described as right-wing dictatorships, Italian fascism remained on the border between a right-wing and a totalitarian dictatorship. Italian fascism remained on the borderline between a right-wing and a totalitarian dictatorship, while German National Socialism has in many cases dashed the initial hopes of its bourgeois adherents or supporters that it would operate within the framework of a provisional right-wing dictatorship and would look after exclusively bourgeois interests.

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<sup>436</sup> Apparently in view of the recent experiences in Italy and Germany, Repke formulated this bourgeois apprehension as follows: "Whether a state begins with an anti-Tyrannical socialism or with an anti-Socialist tyranny, the inner logic of development will always lead to the fact that both states will finally meet in the same final result: the tyranny without liberty, the total collectivism, which takes hold of all areas of social life. In the long run, the economic dictatorship can no more exclude the political-spiritual dictatorship than, conversely, the political-spiritual dictatorship can exclude the economic dictatorship" (Gesellschaftskrisis, 147).

## 5. concluding remark

Conservatism as a concrete historical phenomenon that was accompanied by a firmly defined ideology is !fear dead and buried. It is simply nonsensical to call contemporary Western political programs, parties or governments "conservative", which are committed to technological progress, social mobility and thus to the modern principle of the feasibility of the world, and thus, despite all traditional moralizing rhetoric, call for a development that has initiated as yet unforeseeable transformations in human history and will perhaps not even stop at the biological substance of the species. Such language has nevertheless become indispensable for polemical reasons: it is needed both by orthodox liberalism, which wants to distinguish itself from the mass-democratic and welfare-state tendencies of "left-liberalism," and by the left of all shades, which in its endeavor to monopolize "true" progress for itself can think of no worse accusation against its enemies than that of "conservatism" and "reaction. The actual events in history, however, take place beyond the polemical slogans, although the promoters and users of these slogans believe in a necessary relationship of these slogans to historical events. On the other hand, these events are driven by the very energies that the polemical slogans release. In this respect, one condition of effective historical action is that one does not know what one is doing - and also that one theorizes this ignorance with all argumentative means.

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# INDEX NOMINUM

Italic page numbers mean dall the keyword is in a fullnote.

Acton 31,31,34  
d' Addio 128,130  
Adhemar f388., 392,433  
Albertini 13374,101,124., 146,155  
Allen, C. 198  
Allen, J. 107,109,185,188,189, 190,191  
Ammirato 142  
Ancillon 236,240  
Anderson 321Antony  
de Butrio 70d'  
Antraigues 237f. 244  
Aris 273,383  
Aristotle 68,70,71,71,78,79,96,98,127,  
133,137,141,164166,221,260, , 264,269,  
273,282,403  
Armin 481  
Arnold 129  
Aron 59  
Aston 84  
Atger 130  
Auerbach 52,53  
Augustin 68,131,136,274  
Aulard 238, 236,244,368  
Aylmer, G. 82  
Aylmer, J. 185  
  
Baader 37,169,214,217,223,266,277,278,  
278,279,279,280,285,323,324,330,334,  
335,336,358,360,361,363,364,366,437  
Back 97,99,115, 130133,134., 154,167  
Bar 126  
Bailey 97,171  
Baldensperger 238,240,314,349,378  
Balzac 378,379,392  
Barker 31,454  
Barner 139  
Barruel 238224,252., 330,349  
Barth 238,329  
Barzun 87,163  
Bastid 317  
Farmer 28  
Baumer 183,182, 184, 185  
Baumgartner 105,107,132,135,138  
Bautain 333  
Behnen 296  
Beik 122,237,238,244,252,255,281,330

Bekk 331  
Bellarmin 100  
Belluga 96  
v. Below 116,385,500  
Benoist 139,140  
Bentham 58,396,486  
v. Berg 321,408  
Beyer 491,496,499f.  
Beza 109, 134, 135,137,159, 171, 314  
Bickart 95,98,133,304  
Bindewald 295  
Birtsch 121,304  
Bismarck 209,246,251,253,282,413,415,  
440  
Bitton 87,164,166,180  
Blackstone f.193,194, ff197., 203,206  
Blake 195,399,400,435,437  
Blatschford 52  
Blet 86  
Bluche 89,180  
Bodin 73f.76,97., 186,272  
Bockenforde 319,426  
Boehm f485., 487  
Bottiger 252  
Bolingbroke f195., f202., 204,238,397  
Bonald 123,186,211,215f., f217., 220,224,  
226 f., 261-3,228,239,241,255, 264f.,  
266,268,272,277,278,279,279, 280,281,  
282,284,297,303,308 f., 316,317,323,  
325,330,333,335,336,336,337 f., 340,  
341,348, 349, 350, f353., 354,363,364,  
365,368 f., f375., 383,389,391  
Bonnetty 333  
Bonney 84  
Booms412 , 415  
Bos. 111  
Bossuet f97., 353  
Boswell 196  
Botero 142,144  
Botzenhart 315  
Boucher 135  
Boulainvilliers 87,98,130,134,135,159,  
161,163,164,166,167,169,170, 171,172,  
173,178,213,237  
Bowe 129,135  
Bowen 443,494,495

Bracton 71,199  
Bradlaugh 31  
Brandes  
123,233,283,297,303,315,337,  
340,341,342,372,377 ,384,401  
Brown 317  
Brewer 204,205  
Breysig 105,120,133,163  
Brinckmann280,291325, , 349,382,383  
Brinton 31,291,395,396,398  
Brissaud 133,135  
Brodrick 179  
Brown 163,170,173  
Bruckner 88,149  
Brunner 68,69,72,88,113,114,116,121,  
277  
Bruno 211  
Brutus 91,109,130,132,133,134,135,137,  
162,170, 172, 174  
Bryant 423  
Buat-nan ay 180  
Buchanan109,104,128 - , 134135., 169,186  
Buchda 120  
Bulow-Cummerow f402., 405  
Bush 85  
Burke f19,150,153,193197,199,201., ,  
203, 205, 205206,218,219., 221,223,  
234 f.,236 , f236., 238, f250., 252,260,  
262, 263(, 269-71, 266,272,277,281,  
282,290,292,315,317,328,329, 331[,  
333,336,339,340,341,346,348,349,354,  
377,394  
Butler 48  
  
Cadart 117,121,123  
Calleo 396  
Campe 115,116,117,213,247  
Canning 399  
Caprariis109-93,101,143,146., 157,158,  
159  
Carcassone 98,99,122,125,133,160,163,  
180,314  
Carlyle, A. 71,74,111  
Carlyle, R.-Carlyle, A.. 67,71,131,157  
Carlyle, Th. 448-54,419,455 , 457f., 459,  
460,482,501  
Carre 89,180,304  
Carro 65,66,127,147  
Carsten 111,133  
Cartes ius 211  
Casey 43  
Cazales 244  
Cecile f13,420.

Charles I. 188,397  
Chateaubriand 37,244,256,301f., 317,348,  
354,381,381,384,463  
Chere! 138, 139, 141  
Chlumecky 109  
Chr imes 183,185  
  
Ch risterm 316  
Church 75,97,125,138,142,145,146,154,  
155,158,175  
Churchill 436  
Clarke42 , 38,44, 48, 49  
Clement 140  
Cobban 205,292  
Coke 150f., 157,167,179,188,198,206,  
219,332  
Cole 499  
Coleridge 193,206,271,272,278,291,302,  
309,334,358,360,362,364,365,370,372,  
380,394,395 f., 397,419,448,449  
Comte 460,463  
Condillac 376  
Condorcet 354  
Congar 157  
Contzen 92,140  
Cool 35  
Coquille f93., f134.,, 135,147,155157,  
159,170,171,172,173,174, 175,195,210  
Cornford 400  
Cortes241 , 229,233,240,251.,f,257266,  
278,278 f., f300.,, 329,330,337,345347  
Costello 131, 135  
Cottu 258f., 303,317  
Cowling 40,436  
Crick 52,53  
Cromwell, O. 314  
Cromwell, Th. 145,186  
  
Kiln 481,499  
Davis 203  
Dawson 61  
Dedieu 314  
De Lolme 244,315  
Demeter 85  
Dennert 130,133  
Dickens 145,183,186  
Dickinson195200,201, ,202,205,206  
Diederichs 492  
Digby 398  
Disraeli f396. 399., 400,422,435,436  
Dobersinsy 98  
Dock213,270 -  
Dodge 304



\_\_\_\_\_

\_\_\_\_\_

Donnadieu 331  
Doolin 75,94,97,98,130,133,171,172, 174  
Dostoevsky 140  
Du Bos 161  
Du Haitian 93  
Du Moulin 157,158  
Duroselle 432,433,434

Gemstone 86  
Egret 13,89,108,122,133,161,169  
Eliot 61  
Elm 36  
Elton 184,185,186  
Engels 501  
d' Epinac 125,154  
Eppler 61  
Epstein, Kl. 13  
Epstein, L. 46,48,49

Fawtier 121  
Feiling 39,49  
Fenelon f., f84,94,96,98,101124,135, 139, 144, 147147,163,165,170,£, 171,172, 173,175178, 177,178,195,180, ,210,237  
Ferdinand II (Emperor) Ferrand 92237  
Ferraz 333,376  
Feuchtwanger 400  
Spruce 290,324,325,326,383,384  
Field 52  
Figgis 99,109,130,169  
Filmer 200  
v. Finckenstein 131,295  
Fine 52  
Flammermont95,98125,126, , 133,153, 155,160,166,168, 174,181  
Fontane 322  
Ford 83,89,161  
Forsett 189  
Forsthoﬀ 60,490  
Fortescue 182  
Fouque d' Aries 389,392  
Franco 506  
Francis I (King of France) 86,216  
Frandl d 5  
Frauendorf 499  
Freud 477  
Friend,]. 144  
Friend, M. 476  
Freyberg 123  
v. Freytagh-Loringhofen 430

Fried 483  
Frederick 38, 39, 60, Frederick  
William 166 Frederick  
212William IV. 257,409  
Fugger 367  
Spark 311  
Fustel de Coulanges 460

Gallouedec-Genuys 84,94,102,172  
Gamble 43,45  
Gentillet 138,140,149,174  
Gentz 37,207,247,251,252,270,280, 281 (, f286,288.291.294, ,309,316,317, 318,325,332,334,349,377,379,382,383 , 384  
George III. 203,234  
George 183  
Gerhard 82,112,119,120  
Gerlach E. L. v. 55,213,215,222,225, 242 f., f253., f262,, 276277,279,281, 282,283,285,286,289,294,295,296, 305f. 308,312,313,320,321.,326,327, 329,348,352,359,360,379,403,404408, 409,412,415,416,438,441  
Gerlach, Fr. v. 255,408  
Gerlach, L. v. f., 213,223,233,242246,251, 253f.278,284, 312305,308., , 320,361, 365,370,408,409,438  
Gerlach, W. v. 222  
Gerstenberger 12,489  
Gerstenmaier 38  
Gierke65,66,70,71 , 131,308  
Gilmore72 , 75,157  
v. Gleichen 485, 491  
Godechot 232,237,238,249,251  
Gohring 84,98,108,161  
Gorres 292-4,169,212,283, £311,318,344.  
Goetting 363,437,438,441  
Goldwater 51  
Gollwitzer 321,413, 415, 416  
Gooch184 ,188 , 191  
Goodwin 88  
Gough187 , 188,197  
Grandmaison 432  
Grassby 180  
Grebing 37  
Green 31  
Greenleaf 49,422  
Greenenhagen 12,18  
Griffiths 119,126,153,155  
Grotius211 , 304  
Gruder 88

Guise 132  
Gurian 279,460,462,465  
Gustavus Adolf III . 212  
Guyon 392

Habakkuk 186,192,193  
Hahn406,440,441,442 , 444,446  
Hailsham 35,49  
Hale144,151,152,157 , 219  
Haller225 , 37,212,220,221,230-2233, , 239,240,242,252 f., 262,264,267,272, 276,284,286, 288309,312,329 , , 347,354, 355,370  
Hamilton 91,129,147  
Hardenberg 117,219,294,308  
Hartung 120  
Hasenclever 61  
Ha886,114116,117, , 120,158  
Hayden 82,162  
Hay ek 34  
Hearnshaw 422  
Army 57  
Heffter 413,446  
Hegel f.324,324, f325, 502  
Henry III (King of France) Henry74 IV (King of France) Henry 38982,86,120  
Heinrichs 87  
Helbig 120,121  
Heller49 , 6498  
Helvetius 375  
Herberger 368,423,441,442,444  
Herd 111  
Herder 287  
Hermens f498.  
Hermes 331  
Herding 494  
Hexter 87,189  
Hilger205,235,271,332 , 336  
Hill 151  
Hinrichs 92  
Hintze, H. 155  
Hintze, O , 83,118121,182  
Heat 494  
Hobbes75,113,129,144,152,161 ,168,235  
Hobsbawm 21  
Hoffner 180  
Holzle 160  
Hofmann 113,117  
Holmes 195  
de l' Hommeau 74

Hooker133 , 100,127,129,135, 148,150, 153,165,16168,183, 184,201,260  
Hotman 135,145,147,153,157,158,159, 172,173174  
Huber, E. 426  
Huber, V.-A. 444-6  
Hugenberg 490,491  
Huntington 13

James I. 188,189, 200  
James II186., 200,397  
Jarcke211,212,214,220,221,222,222,223 , 224,225 , 239, f249,252,256.265, , 266, 268,272,283,284,285,289298,301, 302,311 , ,310,333319, 351f.,338,341, 359,387  
Jaszi 96,104,186  
Jauly 138  
Jensen 328,346  
Joachim imsen 271  
Johnson 196  
Joly94,133,135 , 144,179  
Jonas 431  
Jordan 249,403,404,437  
Joseph II (Emperor) 21, 2304  
Judson 185,187,189,191,192  
J iinger 485  
Ju ng 487-9  
Jurieu 304

Kaltenbrunner34 , 22,37, 38  
Kant 290,325,332,333  
Charlemagne 159  
Catherine II (Empress of Ru8land) 212  
Businessman 12  
Keir 203  
Kelley 157  
Kenyon189 , 190,192  
Kern68 ,65,67,71 , 103  
Beggars443,494  
Kirk50 ,33,51,53 , 53  
Kleinhappl 128  
Klemperer470 , 477  
Klett 58  
Kliger 160,191  
Kluckhohn 385  
Kluxen 195  
Knoll, A. 179  
Knoll,]. 489  
Knowles 186  
Kahle 120  
Koenigsberger 121

Kohn 288  
 Condylis 17,18,24,79,141,158,248,307 ,  
 347,350,351, 374,415  
 Koselleck 307  
 Koser 133,165  
 Kossmann 75,97  
 Kotovich 101,130, 133, 135, 146  
 Kramnick 204,206  
 Kraus 360  
 Kretzer 109  
 Kroetz 61  
 Krollmann 88  
 Kuenelt-Leddihn 38  
  
 Labatut 162  
 Labitte 74,105,106, , 135,142  
 Lacour-Gayet 101  
 Lagarde 247,473,475f, 478,481  
 La Mennais 279,298  
 Lancizolle 272  
 Landmann 94,105 , 109  
 Landshut 41  
 Lanseros 135  
 Larkin 201  
 Lassaigne 86  
 Lassalle 445  
 La Tour du Pin Laurence  
 460,328  
 Laures 132,135,174  
 Le Bret 74,83  
 Lecky 31,31  
 Lee 88 , 176  
 Lefebvre 13  
 Lehmberg 184  
 Lehnert 86  
 Leibniz 347  
 Le Laboureur 163  
 Lemaire 74,94,97,106,109,124,133  
 Lviv 287  
 Lenin 59  
 Lenz 318,361,370,500  
 Leo 243,249f,280,321,327,355,410,437  
 Leroy 378  
 Lewis, E. 66,65,67,72 , 157  
 Lewis, G. 53  
 Lewis, J. 96,104,186  
 Lhomme 387  
 L' Hopital 74 , 145  
 Lieberich 82,87,162  
 Lindeck 130  
 Link 99,174,304  
 Lippincott 31,449,454

Lissarague 132,135  
 Lloyd George 421,422  
 Locke, J. 192,201,206,304, 304  
 Locke, R. 392, 434  
 Locmaria 390f, 392  
 Lowenthal 118  
 Lombard 161  
 Londonderry 435  
 Lorenzi 335,376  
 Louis XI. 93,159  
 Louis XIV 165,212,213,214,216,, 217,237,  
 463  
 Louis XVI 216, 238  
 Louis-Napoleon 251,392  
 Lousse 111 , 119  
 Loyseau 163  
 Lukacs 502  
 Lutz 139,145  
 Lyon 121  
  
 Machiavelli et seq. 73,137,211,277,282,322,  
 478  
 Maier 111,149 , 154,169  
 Maine 31,31  
 de Maistre 216,218f, 228-30, 220,221,241,  
 262,274,277,279,308,317,325,333,335 ,  
 336,337,341 f, 346f, 349,350,354,378,  
 389,391  
 Malesherbes 169  
 Mallet du Pan 244 , 122,236,252,297, 301,  
 315,341,348,365,377  
 Malleck 33  
 Mandrou 107,161,162  
 Mandate 74  
 Manners 397f, 435  
 Mannheim 12,14,500  
 Maran 158  
 Marcks 82,88,162  
 Mariana 174 ,91,93,104,130,163,175 , 178  
 Marie-Antoinette 238  
 Markham 282  
 Marsilius (Defensor Pacis)  
 Martin 70,242 , 306  
 Martiny 401  
 v. Marwitz 219,221,239,265,266 , 267,  
 272,283,284 , 288,291,294,295 , 299,302,  
 354,356,357,361,367,384,406, 408,437  
 Marx f202,257,501  
 Mary (Queen of England) 186  
 Mesh 60,490  
 Massillon 99  
 Mattei 139,140,141,142,144

Maurras 460-9, 497,498  
 Maury 232,236  
 Maximilian I of Bayem Mayer  
 92430  
 Mazarin 138  
 McClelland 315,319  
 McDowell 399,422  
 Mcilwain 185,67,71,96,105,, 188,191  
 Meinecke 240,242,280,292,408  
 Meisner 244,394  
 Melliet 141  
 Mellon 215,279 ,297,349  
 de Melun 434  
 Mercier 109,304  
 Flag 71  
 Flag 22,44,57  
 Mesnard 101, 105,109,, 128,147  
 Metternich 54 , 241,251,318 , 382  
 Meyer, Fr. 34,50  
 Meyer, G. 192  
 Mill 31  
 Mills 53  
 Mingay 192,195,196  
 Mirabeau 176f,143,163,167,170,171,  
 177, 178, 178f, 180  
 Mitrofanov 155,165,304  
 Moellendorf 495  
 Moeller van den Bruck 476 , 59,480-3,478,  
 484,486,487,496  
 Moser 103,155,239 , f221,240,265,268,  
 284,302,335,338,359,361,362,367,369,  
 370,375,376,377 , 377,383  
 Mohl 310  
 Mohler 58-60, 478  
 Molina 91,127,128, , 135,147  
 Moltke 402  
 Mommsen 242,411,412,431  
 Montesquieu 98,218,244,304,352,353  
 Monclosier 213 , 221,244,252, 255,279,  
 297 f, 301,305,317,432  
 Moreau 105 , 94,97,98,100,133,125,135 ,  
 140,145,167,169,170,172, 174,177  
 de Morgues 139  
 Morris 184  
 Mortari 157,158  
 Moser 110,123,142, , 158,159  
 Moss 184,186,188,189  
 Moulinie 221,265,266,279 , 280,303  
 Mousnier 74,84,87,104,107 , 165,166  
 Muller, A. 37,207,211,214,, 220,222,  
 223f, f227,247,251,263 , 261,266 , , 273,  
 275,276,278,280,283,284,285 , 290,291,

316,317,325, 333f, 335,338,349,354,  
 356,357 f, 357,359,361 , 360,362 , 368,  
 369,370,371,373,379 , 377 , , 382,383,384,  
 437  
 Mueller, Chr. 117,118,234  
 Muller-Armack f492  
 Musebeck 310  
 Munz 184  
 Muralt 490  
 Myers 121  
  
 Naf 112,120,121 , 130  
 Namier 204  
 Napoleon 252,283,295,317,347,391  
 Naum ann 427 , 446  
 Nawroth 38  
 Neale 186  
 Neumann 412 , 437, 490  
 Niekisch 480  
 Nietzsche 473,477,480  
 Nipperdey 429  
 Nisbet 42  
 Nolte 462,468  
 Novalis 169,240,288,349,381,384  
 Nurnberg 109  
  
 Oakeshott 56  
 Oakley 97  
 Obrecht 169  
 Oechslin 251 , 354  
 Oestreich 82,110,112,120 , 130  
 Ogg 193,195  
 Oldendorp 154  
 Osgood 393,465,468  
 O'Sullivan 34,39,53 , 61,420  
  
 Pain 193  
 Palmer 13,88,181,304  
 Palmerston 399  
 v. Papen 489  
 Pareto 478  
 Parker 191,191  
 Parsons 184  
 Paulsen 444 , 445  
 Peckham 52  
 Peel 320,399,422,435  
 Peller 140  
 Perthes 382  
 Peterson 97,120,167  
 Petit 82  
 Philip the Fair 70  
 Picot 82,100,105,135 , 163,166

Pinto-Duschinski 419  
**Pitt** (theJingere) 397  
 Plato 78,166,380,454,498  
 Plumb 192,193  
 Pocock 157,159,160,188,189,197,219  
 Poetzsch 385  
 Pole 140,145  
 Polish 139  
 Pontano 145  
 Porschnew 107  
 Posse 117  
 Postal mail 118,121  
 Pot 135  
 Powicke 183,185  
 Poynt 184  
 de Priezac 164  
 Puaux 101  
 Putter f99,, 148155,174  
 Puhle 414  
 Pym 189f.

Quabbe f470,491.  
 Quaritsch 69,71,74,115

Raab 138  
 Rachfahl 114,116  
 Radowit z211212,214, ,220,221,222,223,  
 224,225,226,231,233,240 f,249,256,  
 279,280,282,284,285,286,288,295,299,  
 303,305,310,312,319,324,326,330,356,  
 358,366,367,369,372,440

Ramlow 295  
 Ranger 21  
 Vine 37,271  
 Raphael 211  
 Rathenau 483,495  
 Raumer 84  
 Rauschning 491,499  
 Reh berg214 ,207,233,266,284,285 , 288,  
 290,297,302,315,332,354,360,361,363

, 369,372,377,379 f., 383,384,401,402  
 Reinhard 89,180  
 Remond388,392,460,465 , 467,469  
 Renan 418,460  
 Resnick 249,251  
 Retz 101  
 Rexius 235,351  
 Ribadaneyra 92,137,138,140,142,143,  
 167,170, 171,179  
 Ribhegge 12  
 Richard 180  
 Richelieu97,138,149,158 , 213,237

Richthofen 442,444,446  
 Riemer 237,238  
 Circle ice 213  
 Ritter, G. 289,295,308,315 , 415,416  
 Knight, G. A. 187,189  
 Rivarol f232,238,264 ,290, ,297,377  
 Roberts 435  
 Rochau 247,409  
 Roche 460  
 Rodbertus 446  
 Roe 449,454,457,458  
 Roder 429  
 Repke f32,33., 34,41,493,506  
 Rofller 162  
 Rogister 160  
 Rohan 161  
 Rohden 1418,230,351,, 381,383  
 Romein 13,57  
 Rommen 128,135  
 Roscher 178  
 Rosenberg85 , 405  
 Rossi 79  
 Rossiter 50, f36,39,53. , 56  
 Rothschild 367,392  
 Rousseau113 , , 218227,304,315 ,463,489  
 Rowlands 207  
 Rusk in 454- 9,460  
 Russell 34

Saile 246,253,439,440  
 Saint-Simon , CI. -H. 298  
 Saint-Simon, L84,87,156. 163,172  
 Salazar 506  
 Salisbury418 - 31,400,20  
 Salmon 86,101,162,183,186  
 Salomon 383  
 Sanchez Agesta 98,127  
 Savigny  
 Savorg351 nan  
 Schaffie  
 417321,407  
 Scheel 223,262,280,300,319,437,438  
 Schell219 , 260  
 Schelling 169, 324, 325, 3  
 26Schenk zu Schweinsberg  
 Scheuner 402143,311  
 Drumsticks 169,211,216,220,223,223,226,  
 228,239,240,241249,265 ,267,274,278,  
 279,280, 281,281282,288,298,, 305,306,  
 309, 318,324,329,343f., 347,353,354,  
 356,362372,380,382, ,383,383  
 Schleiermacher 326  
 Schmidt- Lilienberg 104

Schmitt 230,255,351,383,490  
 Schoningh 38  
 Schoeps 19 , f16,55., 59  
 Scholl 151  
 Scholz 70  
 Scotsman 489  
 Schubert 105,114  
 Shiite head 243,441,484  
 Schultze-Delitzsch 440,445  
 Schumann 205,234  
 Schwarzkopf 33  
 Schwerin 98  
 Bulkhead 470,476,477,479,480  
 Scott 398  
 Seckendorff100 , 178 , 101,140,170,177,179(  
 See 83,84,94,101,105  
 Ropes 92  
 Seyssel 93,97,125,144,167,169,177  
 Shakespeare 502  
 Shirley 184  
 Sidney 304  
 Sigler 52  
 Silhon 161  
 Sim mel 502  
 Sixtus V. (Paps t) 132  
 Skinner 197  
 Smith, A. 263317,,357,360  
 Smith, P. 419,420, 437  
 Smith, Th. 156,97,128,134,165 , 185,191  
 Smith, W. 332  
 Soder 129  
 Solms 162,175,179  
 Solms-Lich310 ,  
 311v. Son ntag  
 Sophocles  
 240,268501  
 Sorrentino 139,140  
 Soto91 104,132, ,147,179  
 Spaemann 266,333,378  
 Span 328  
 Spangenberg 103,173,175  
 span 497(  
 Speier 85,166  
 Spengler 487  
 Spinoza 113,211  
 Srbik 241,382  
 Stackelberg 139  
 Stadler473 , 484  
 Stack 316  
 Steel 205,211f.224 , 233,236,240,241,  
 245 f., Z68, 275f. 276,280,280,,281,282,  
 286,289,300,312 f., f320. , f325.,330,  
 337,355,379,406,410,500 f.

Stankiewicz 101,143  
 Steffens 310,361  
 Climb 315,361  
 Stone, Fr. K. Baron v. 315,406  
 Stein, L. v.  
 Step489 hen 31,31  
 Stern479 ,480,481 , 483,484  
 Stewart 389,399  
 St. German183 , 184  
 Stylish 414,423,441,442  
 Stoecker 446  
 Stolberg 295  
 Stolberg-Wernigerode 416,417  
 Stourzh 197  
 Strasser 480,484  
 Stricker 104  
 Sturmberger88 ,86,104,105,107,135,143 ,  
 156,158,162,165,167  
 Suarez 66,68,97,100,109,127,128,129,  
 131,132,134,137, 140,147  
 Sumn er 52  
 Sutcliffe 164

Tacitus 199  
 Taine 418,460  
 Tawney 186  
 Tezner 114,116,120  
 v. Thadden 403  
 v. T hadden-Tri egla ff 242  
 Th aer 360  
 Th iers 214  
 Thomas 65,66,68,72,91,104,127,131,  
 137,143, 166,182,184  
 Thomson 88  
 Thuau97 , 124 , 100,138 , 139,140,142,144,  
 146,149,158,161,163, 166,168  
 Tieck 325,384  
 Table leather 127  
 Titian 455  
 Tocq ueville ,25,31,3437213, ,215,327,  
 418487  
 Tennies417 , 428  
 Toffan 139  
 Tommasi 140  
 Tommasi\_ni 139  
 Topitsch 38  
 Treca101 , 172  
 Trevelyan186,193,196 , 435  
 Troeltsch 483,484  
 Chernembl f 103.,107,156,167  
 Tudesq 317,388,389,392,433  
 Turberville 204



---

Twesten 409

Uhlhom 82,99,162,179

Ullmann, H. 57,470,491

Ullmann, W. 65,70,71,111

Unger 103,114,116,120,123

Valjavec 12,13 , 14,247,248,304,319,376

de Valois 163

Vattel 281

Cousin 131,310

Square 50,51 , 54

Quad 28,311

Villeneuve f., 317,363,364,364f.371, 433f.

Vitoria 109,127,128129 , 147,179

Bird 214,316,333,360,363,377,383,402

Vollgraff 272 ,113,116,122,299 , 310

Voltaire 314

Wagener 55,59,253,308,358,370,406, 439,440,443,445

Walpole 203f.

Walser 88

Ward 193

Weber, E. 463,465, 467, 468,497

Weber, M. 27,428

Weill 74,104,105,107,109,174

Wine night 144

White 89,180,437

Wellington 435

Westarp 416,429

Weston 189,199

Whibley 397,398

Wieruszowski 70,86

William 319

Wilks 70

Williams 449,454

Willoweit 75

Wilson 19,52,54

Arrow 85

Wolfgang Wilhelm (Palatine) 167

Wolzendorff 103

Wordsworth f., 291309,395

Wormuth 188,189,190,191

Yardeni 107,143,148,174

Zagorin 189

Zehrer 57, f473,483,490.

Ziegler 489-490

## INDEX RERUM

- Absolutism
- Continuity of A. and Revolution 212ff.25,
  - and modern sovereignty 74
  - his compromises with the societas civilis f83., 90,112
  - traditional and absolutist use of "absolute" 96-8, f189,228.
  - his dissociation from Machiavelli's muso 146
  - its tendency towards standardisation 155, 157f.
  - its legitimacy through history 159
  - the material grief of his failure in England 186
  - conservative opposition to him even after 1789208,238 ff., 242,304,388,395
- Abstract - Concrete
- epistemological weaknesses and polemical sense of their counter-representation f19., f55,., 145339
- nobility (cf. biirgy, birocacy)
- as the historical bearer of conservatism 27,64
  - its ambiguous relationship with the emerging state 81ff., 246
  - his antagonism us with the clergy et seq., f8592.,183f., 378
  - and modern education f87. , 407,417
  - and social mobility f88., 162
  - its internal division 89 f.
  - his acquaintance with absolutism in the face of Gefali.r from below f101.
  - and "conservation" 125f., 262,406
  - his hostility to Machiavellianism 137f.
  - his fervent longing for the medieval world. 161,162
  - its crisis in the 16th century 162
  - its ideological battles ff.162
  - its main social functions166,262 , 354
  - and the consequences of the new nobilitations 170
  - his fight against the expansion of the state 172 ff.
  - Degeneration of the court nobility 176ff.
- and capitalist transactions 180f., 196, 302 f., 314,319,398,405
  - his disenfranchisement by absolutism 213,216
  - his attitude to the monarchy after 1789236
  - his mood after 1789238
  - its growing dependence on the state 247
  - and biirgertism in the 19th century. 302f., f311., 313,398 f., 416
  - its collapse in France after ff.1830387
  - his ideological approach to the "right te" Biirgertum 391f., f416.
  - its crisis and its attempts to adapt in Germany after ff.1815401
  - its transformation into part of the new society f411.
  - his extinction 417
  - his collusion with the biirger- tum against socialism f417., 428ff.
  - and social question 444,445
  - at Carlyle 452,453
  - and vi:ilk !dee 476
  - and Germanicism Amterk481
- auflichkeit f83., activism87,170
- no opposition to conservatism 15,64,102,248
  - as a cause of the plasticity of conservative thought. 109
  - as a right of resistance and as a dictatorship 247f.208,
- old germanic freedom work160
- its modern valorisation f78., 447
  - as the essence of man and as a curse 371,443
  - at Carlyle 451f.
  - at Ruskin f457.
- Division of labour
- their consequences for the nature of man 369(
- atheism (cf. deism, materialism, man)
- as a separation of ethics and politics f140.

- as primacy of the earthly 140
- as a claim to the sovereign making of law 322
- Variety of its forms f323. , 330
- against human nature insurrection332
- Opposition of A. and conservatism 11ff., f63. , 373,378
- unconscious affinity between A. and conservatism 226,351
- and revolution 328
- its anti-intellectualist character 374(
- State of emergency
- and the new concept of politics and the state143.
- its conservative disparagement 144,256

- civil servants (cf. bureaucracy)
- their anti-traditional attitude 171
- as the bearer of the modern state concept283
- vs. [dee in Miüller and Coleridge333 f. history of concepts
- Nützlichkeit and limits f27.
- Boses, s. Theodicy
- Bonapartism (cf. dictatorship) 212,257 , 306,460
- Biirgertum (cf. aristocracy, bi.irokr atie, liberalism, national socialism).
- his joining the Conservative Party in England f35,399.
- Change in his social position and ambivalent relationship with the state f47.,423
- fri.ihe confrontation with the nobility 163
- and the modern turn to the This 211, 212
- his courting of the Monarchic f307.
- as the ruling class in the economically oriented society. 363
- his change of front after the rise of democracy 419
- in the Empire ff.425
- its radicalisation in the Weimar Zeit ff.469
- and dictatorship ff.471,504
- and corporativism 495 f.
- Bi.iro kratie (cf. officials)
- vs. Adel243 , 255,284,306,310 , 392,409, 441,445

- vs. Bi.irgertum 488,489

Christianity (see Religion)

- its liberal-individualist ideology 37(
- its contrast with modernity 57
- its aesthetisation 448
- vs. Germanicism 481

Duration 153f., 360,479

Deismu s

- as covert atheism 323
- his conservative opposition 328
- and liberalism

330Democracy

- their demand for substantive rights 30
- as a necessary consequence of Liberahsmus 31, 33 f. , 297ff. , 61,500
- as an antithesis to „totalitarianism". 50
- and horizontal separations 282
- the front of all eigenti.imers against sic 300ff., ff.417
- and atheism 330
- democratic movement in the empire 426
- in the spirit of capitalist parliamentarism f452,461.
- and state 462
- as Oligarchic 466
- Dictatorship (cf. Bonapartism, Bi.irgert um)
- as a novelty of counter-revolutionary con servativism f26,247.
- its roots in the relationship of the aristocracy to the state 84
- as an extreme use of the state in favour of the nobility 208,248
- their link with conservatism 248
- revolutionary D. 252,258
- provisional nature of conservative D. 254 et seq. , f505.
- at Maurras f464.
- and the rights 504et seq.

Efficiency (cf. economism) f44., property59 (cf. justice)

- its inviolability174,222,299 , 307, 418421. , 430,434,443
- and family266 ,359 ,360
- its threat to political equality ff.297

542

- be n conservative and its capitalist concept ff., 359403
- the imposition of capitalist e. s and the front of all eigenti.imers f417.
- Elite 429f., 40,418,447
- at Carlyle452 , f453.
- at Rusk.in 459
- at Maurras465 f.
- Nietzsche and the youth movement 473
- in the „Conservative Revolution"474 , 492
- ethics (cf. societas civilis)
- its unity with traditional policies 136ff., 235,282
- Eudamonism (cf. materialism)
- in the mass consumer society 33,43
- and revolutionary turn to this seven140,267336 , 355,449
- liberal E304,371,372., 482,486,492

Family or oikos

- as the basic unit of societas 264(127,136,
- as a type of traditional rule 165, 264 ( ,266

Fascism 469

- and corporativism f498.
- between right-wing and totalitarian dictatorship 506

Feud Progress idea102

- its association with the modemen Sou veranitat 76,352
- its conservative dedication 342ff., 354
- and „conservative revolution" freedom 476,478or liberties (cf. equality) 167,222

Gallicanism 157,279

Money (cf. Hierarchic)

- as a symbol of capitalist wim chafts form 178
- its immoralising effect on f.178, 196,366 f., 461, f450,501.
- its impact across the economic spectrum 361
- its consequences for work and production 367f.

- „lively es G." at Mi.iller Common Good368 (cf. Welfare)

- as a pretext for levelling up the state 214,256,272
- Justice (cf. equality)
- as iustitia distributiva68 f., f166., f221.
- and Hierarchic 166
- and the inviolability of property 174,222

History

- their use in the struggle between the aristocracy and absolutism ff.158
- as an area of purely human aspirations 226
- its conservative periodisation 342ff.
- their spacing f351.
- conservative science of the G. (352
- Philosophy of History
- as a conservative response to the Revolu tion ff.209,342

Society (cf. State)

- their separation from the state and the divisions that go with it 138 ff., 272,356
- revolutionary use of the term 275
- and the inherent legality of the economi 356

law (cf. law, lex)

- as an application of divine right f65. , f132.
- his detachment from divine right 73, 220
- its interpretation by its sovereign scooper f75., 80
- as an instrument for reform or revolu- tion 76
- his zwci Artcn to Fenelon 94
- Hooker's Law of God 167
- at Bonal d 218
- its opposite to the right f220.
- as a dead letter 227, 285
- does not bind its victim 230
- levelling effect of the general laws f284.

Separation of powers

- and modern sovereignty 72,115
- Fiction of the G. in England f.203
- their conservative rejection f232., f237,309,411.

Equality

543

- vs. freedom 39,221f, 285
- unknown in the law of *societas civilis* 68
- as a consequence of modern sovereignty 77,161
- their complete rejection <by the nobility 163,165,166,168
- vs. justice f221
- before the law 285,293,417
- formal and substantive f297,298
- and atheism 323
- inaccessible because of the Siinden case 434
- unnatürlich 452,462
- God (cf. atheism, deism)
  - as the author of the right 65
  - as author of the *societas* 128,136,261f.
  - Revolt against him 224,345
  - arbitrary interpretability of its willy-willy 224fate
- socio-political gripes of the appeal to him 322
- as the guarantor of a hierarchical order 327
- and nature 328f346,, 347,378
- socio-political implications of the conception of God for the society 329
- his providence in the future 343,344,350
- its disparagement in modern times 449
- Divine Grace
  - in the traditional sense 71f, 100,232, 239,242,245
  - in the absolutist sense of the term 99
- Group (cf. human)
  - their priority over the individual 163 ff.

#### Trade

- friihe conservative call for its containment f179
- its importance fi.ir England 196,316,317,364
- and war 365

Craft 370,441,442,446,457

#### Paganism

- Consequences of its modern rediscovery 211

heroic ideal of life 453459, , 475,476, 480,504

Heterogony of purposes f349. Hierarchy (cf. God)

- and national inequality f39
- their defence <by the nobility 163(161,

- as the basis of the community 166
- their rootedness in the order of being 168
- their decomposition <by money 178
- their identification <through human sociability f335
- Historical School f296,351.
- Court 8487,, 175,176

Idee, see term

#### Individualism (cf. liberalism)

- its old and its social liberal sense 30,31
- in a mass society 41,51
- Christian personalist 38,51
- in the American tradition 52
- its ambiguity 54
- as a consequence of modern sovereignty 77,165,214f, 285
- and economic liberalism f43,180
- the corresponding social model 265,306
- his conservative opposition 266
- in modern contract theory 266(
- Protestant 280
- economic 363
- roman f383
- vs. mass society 430,431
- its rootlessness 41,482,487,492f.
- its common conservative and socialist rejection of f500

#### Industry (cf. division of labour)

- and autlosing the *societas civilis* 27
- their essential difference from farming f360, 414
- and under-thickening of the human f368
- Consequences of their predominance over agriculture f387,392,440
- good" and "bad". 407
- its development in the Empire 427,428
- conservative plans fi.ir their feudalism 438
- at Carlyle and Ruskin 458

#### Intellectual

- "doctores" in the absolutist civil service 171
- in the service of counter-revolutionary conservatism ff210,379
- as types of people f340
- as the author of the revolution 348
- their alliance with the proletariat 365

- theoretical forms of their self-reinforcement ff, 380448
- their position in capitalist society f448, f460.
- and elite 454, 455,459
- and "conservative revolution" f469, 480484
- and aesthetisation of cultural criticism 502
- Interest policy f391,399,402405, , 413
- Right of intervention for 147,281

Jacobinism 31f, f35,106,297 ,348,395, 421,489

Youth movement 473

#### Cabinet system f193,201 Capitalism

- and state f356
- Autonomic of the economic and social consequences of competition f362
- Crisis-proneness of capitalist bkono- mie ff363

#### Critique of capitalism

- among the legitimists 393,433
- in England 395,397f.
- in Germany 411,414,437
- as the axis of the scattered conservative leitmotifs that continue to live on 447
- at Carlyle ff449
- in Ruskin f455
- in Maurras et seq, 461468
- in the "conservative revolution" f474
- Similarities between conservative and socialist K. 500,501

#### Catholicism (280, 345

- social, 434446,443,494, 499
- and Maurras 463
- Church 51,131f, 137,147,225,460,499
- and state f148,183,274,279
- at Coleridge and the Young England 396(
- and Caritas ff432

#### König (cf. monarchical principle, Prarogative)

- its attachment to the law ff,71,93134, 229, et seq.238
- its two faces 71
- judges rather than legislators f72,90, 93 ff., 134,239
- as sovereign legislator 75
- Oppiition to the bully 71,96f98,, 174,238

- elected by the people 132,135
- as an embodiment of the law and of the community 134,213, 239
- Difference between K. and König reich 172, 213
- as a great feudal lord 174,231f, 239
- its place in English constitutional theory and practice 182- 204, 244, 316ff
- its new conservative assessment of 1789208,215 , ff236
- his right of veto 233,237,238f, 444
- as head of the executive 238f237,
- Conservative renunciation of the election of the King 240, 241
- as dictator 256,258
- Achievements of the French Conige 389
- in the constitutional designs of the French royalists f393
- at Coleridge f395
- at the Young England 397f
- at Carlyle f452
- at Maurras 464f, 467
- Concrete, s. Abstract
- Conservatism (cf. Enlightenment, Individualism, critique of capitalism, König, cultural critique, sovereignty, state).
- Sense of its place in the spectrum of modernity 11-13
- not a mere reaction against enlightenment and revolution 11 - 13,24,63,373
- not just a mere intellectual history, l" P11. u.-0 men 12, 2, 463f., 89,209
- not an anthropological constant ff.,13 27,322
- his alleged theophobia ff.16
- as a reformulation of the ideology of the so- cietas civilis 17,25f, et seq.63,207,260
- his alleged realism us 20
- its notion as a historical judgment ff.23
- as a political buzzword amidemokrati Liberal 29ff., 33,34,54,507
- in the American sense 34,50, 50
- as a covert turn to the apolitical 56-58
- left use of his reason 61
- the split between his self-presentation and his practice. 64
- its own ambivalences about the future of the 80
- the general character of the am iabsolutist K. 90



- Addressing policy issues on the basis of expediency considerations 109
- The leitmotifs of the anti-absolutist K. 124
- friihe meaning of "conservation" f125.
- its forms in 18th century England 195f., f204.
- Unity and diversity of the counter-revolutionary K. 207
- its guiding principles and character 208-10
- its partial opening to secular liberalism ff.209,300
- his principled rejection of libertarianism et seq.297
- and English model313 ff.
- and enlightenment 373ff.
- and Romanticism ff.384
- his detachment from the ideal of *societas civilis* 389ff., 401ff., f405.
- its definition from progress 402f., 389,409f., 420f.
- its forms in England after ff.1815394
- its verbalisation in England ff.399
- its crisis in Germany ff.401
- Influencing his character <by party politics 404f.
- its growing vagueness of content f408., 413,414
- its fusion with (old) liberalism and capitalism 418 ff., 428 ff., 490f.470,
- and social policy et seq.432
- and rights 448,477,504,505
- and Carlyle 450f.
- and Ruskin 457
- and Maurras 464,468
- and "conservative revolution" et seq., 475481
- and corporatism 494, 496
- Constitutionalism (cf. repre-sentation)
- in the liberal sense 233,320
- in the conservative sense 243241,ff., f310., 312f.
- at Gorres 293
- Corporatism (cf. fascism, national socialism, parliament, rights)
- 414,433,434 , 438,439f., 460,467,486, 493, 494ff.
- Corruption 202f., 194,204
- Cosmopolitanism 290,291

War (cf. trade)

- and consolidation of firm power 144
- Griinde of his legitimacy <by the nobility 166,209,354
- as a consequence of capitalism 365 Cultural critique
- its emphasis in conservative thinking after 178926
- of old and neo-liberalism et seq., f3160.
- their conservative leitmotifs 366ff.
- at Carlyle 449
- at Maurras 460ff.
- in Moeller van den Bruck 480f.
- Origins and development to date ff.501

#### Art

- and nature in the traditional and the modern conception 79
- under capitalism 448,455
- their role after Carlyle and Ruskin 454,455
- and society in Ruskin 454, 458
- at Moeller van den Bruck 480
- at Diederichs 492

#### Agriculture (cf. Indust rie)

- friihe Enforcement of capitalist conditions in the English L. 186, 195, 394f.
- Enforcement of capitalist conditions in the German L. f403,..., 405407

#### Legality (cf. Legitimacy)

- vs. morality , 142,276285
- vs. patriarchalism

#### Legislative285 (cf. separation of powers)

- as a sovereign corporation ff., 232245
- their exclusion from the 3. education of government 431

#### Legitimism

- its directions 388f., 391
- his attitude to the labour question 433f.

#### and Action Fran aise

#### Legitimacy466

- their interpretation on the basis of considerations of the feasibility 251f.106,
- v. Legalitat 220, 228,251

- vs. modern sovereignty 227,245

- their injury <lurch Bismarck

#### Leibeigntum 415266

#### Liberalism (cf. Democracy, Eudamonism,

Indi vidualism ,J acobinism, Con- dubi

- servativism, neo-liberalism, economic liberalism, economic liberalism).
- its attachment to the separation of state and society 23,60
- the modern state as a prerequisite for its existence 25,78
- difference in the content of the "conservativen" liberalism from conservatism 36ff., 29,49
- his individualistic attitude and its democratic reinterpretation 30
- its split between old and social liberalism 419f., 30,33,430
- old-liberal critique of social liberalism and mass society 31f., 460
- in the American sense 50,50
- and ideological manipulation of history 110f., 215
- Burke's alleged L. 205
- principled conservative assessment of him 297ff.
- and biirgertism 298
- Fluctuations in his relationship with conservatism 300ff.
- Fluctuations in its relationship with absolutism ff.304
- in the sense of the standing monarchy 305f.
- and English model 318f.314,316,
- and deism 330
- "true" L. at Fouque d'Aries 389
- radical L. in England f399,421.
- ideological cover for his anti-democratic turn of phrase 418
- in Germany 424ff.
- in the normative sense424,427,477 , 505
- "western" L. 487f.472,474,482,
- and the rights 477
- and Marxism from the point of view of the "consumerist revolution" f482., 486,487
- Luxury f177., 216,364

#### The idea of power

- at Haller 230f.
- at Cottu 259
- its moral mandate355 (free and imperative) f.,117
- 205 f., 234

#### materialism (cf. eudamonism)

- in the eudamonistic sense of mass society 482f.33,51, , 486,492,503
- historical f59,482.
- as atheism 324,334

#### Mathematics Value added

theory152364 f.

Man (cf. division of labour, industry)

- his sociability 127, 135f., 153, 261f., 334ff.273,
- its constitutive link to a group of people 164,334
- its gothification211 , 223f., 324,344
- its ability to create justice for217..., 222
- as sovereign legislator 224
- his Autonomic as detachment from God 323f., 325
- no mere rational being ff.331
- its divine origin f334., 343f.
- his spirituality 336
- his wickedness and malice 337,347
- as a revolutionary 340f.
- his freedom 345,347,352
- as homo economicus 356
- its under-thickening and division in capitalism ff.368
- his monistic approach to socialism 501, 502 human rights
- their abstract character and their independence from the state 42f.
- their revolutionary universalism 287,289,290

Metaphysics

- as an unworldly abstraction 376f., Middle Ages 419240,498
- monarchical principle 245,280,320, 425f.

#### Nation

- at Burke 250,292
- for steel 286
- in the revolutionary and conservative sense 287f.
- as a dynastic sacrifice 288f., 292,415
- as a historically evolved individuality ff., 289385
- its difference from *societas* 292
- at Gorres292 f.
- Effects of national !dee on German conservatism294 ff., 414f.
- at Maurras f468.
- in the Weimar period and during the "consumerist revolution" 471,472 f., 474, 477f.
- and the Right National
- Bolshevism f504479.

- National economy
  - its methodological principles according to A. Muller (357
  - her criticism of Coleridge 396
  - her critique of Ruskin's 456
- National Socialism
  - Use of motifs of the "conservative revolution". 61
  - and national humiliation 428
  - political practices 489
  - and "young conservatives" 491
  - and nihilism 493
  - and corporativism (499
  - and burger 506
- Nature, s. Equality, God, Hierarchy, Art, Revolution, Reason.
- Natural law
  - Difficulties in its conservative and revolutionary interpretations 22
  - fundamental difference between the modern and the traditional 69,71
  - Mixtures of traditional and neutral N. 304
  - socio-political vanguard of the revolutionary N.'s state of nature335
    - the societas civilis 159
    - in modern natural law 261,263
    - in the conservative sense 263( neoliberalism
    - as a continuation of the old-liberal critique of mass society ff32
    - its English predecessors (, 34422
    - its American version ff49
    - its predecessors in the "conservative revolution" (60,478,485,, 487ff.
- Modern times
  - their ideological principles 78-80
  - its course from a conservative perspective 210-212, 223,258
- Public222,268,280 authorities
  - its separation from the private sphere as a result of the new-age sovereignty £142, 77,175, 276
  - Conservative rejection of this separation £276, 500
  - socialist rejection of the same 500,502
- bkonomie
  - its own lawfulness and the separation of state and society £356, 372
  - as a function of interpersonal relationships 358,456,502
- bkonomism 5333,35,36,52,, 58,59, 371,482,48492,493
- Oligarchy (cf. democracy)
  - their sovereign rule in England 192ff
- Order
  - conservative attempt to monopolise the idea of order f21.
  - Vagueness of the opening concept (58
  - Analogy between cosmic order and social order 168,346
  - at Maurras 462( organic principle
  - its possible interpretations ff.247,249
- oriental despotism 169,241,283
- Paganism (cf. paganism) 449, 464, 481
- Pantheism us
  - vs. Christianity 211
  - in the sense of the gothification of the lrdi- f326.
  - in response to Deism 381( Pope 14183,229,279
- Parliament
  - its traditional termin England 151,185,188,395
  - his sovereign termin England 190,191,197
  - the sense of his sovereignty in Burke £234.
  - in the Empire f425.
  - at Carlyle 452
  - its undermining <by corporatism 495£, 497
- Party 204,404,407,411,491,500,505
- patriarchalism (cf. legality)
  - at Mirabeau 176
  - his early demise in England £398,434195, near Marwitz 265
  - as "solidarity" 266
  - dismantles state authority 280
  - as "love" 285,368,370,437
  - his downfall in Germany 406,437,445
  - at Ruskin 458
- Patrimonial rights or patrimonial jurisdiction 173402,403,, 407,408
- Patriotism 288,291
- Politics (cf. ethics)
  - „conservative" demand for primacy of the political 59
  - politics" in the traditional sense 132,136, 139
  - its separation from ethics ff,138 356£208,
  - their modern sense ff138
  - their understanding of the state of emergency (144
  - their antique republican view 211
  - its conservative unity with ethics and bkonomie f356.
  - Transformation of the political as a result of the autonomy of the economic and the social 362,403
  - as party politics in capitalist society 404f., 413
- Prarogative 187ff, 199, 200,202,203, 235, 236£
- Primogeniture 302,
- Private402, s. public privileges 69,167
- Protectionism 387, 423
- Protestantism (cf. rationalism)
  - Sympathies of the nobility for Protestantism 86,92f.
  - as a precursor to revolution (211,280, 318
- Race
- Rationalism289
  - and decomposition of values in mass society 33
  - as the primacy of human reason224,324 , 333
  - and Protestantism
- Reaction280 (cf. dictatorship)
  - allegedly alien to conservatism as such 37
  - as a precursor to dictatorship 208
  - their meaning and their preconditions law248 (cf. justice)
  - in the view of societas civilis 65 ff , 217
  - not feasible, but God-given65 , £218
  - and custom (66, 155f.
  - Creation of new law as an interpretation of the old67,183,198 , 219
  - and private law or privilege 68f.
- no will of the monarch 94
- its specific location 156(, 290
- rom. f157., f284.
- its codification 157(
- as human work 191f.
- Reform of the traditional conception of the law according to the 217following principles1789
- its character difference from law 220(
- its historical justification225 (, 352
- as sovereign 228
- its infringement <by the State 283
- and freedom 352
- Rights (cf. dictatorship, conservatism)
  - their nationalism 495
  - their corporatism 496
  - and the autonomy of society 496f.
  - and cultural criticism 503
  - and economic liberalism 504f.
  - and separation of state and society £504
  - their principles 504f.
- Rule of law Governance256,283
  - its priority over the societas 128£, 272
  - as a product of the Sundenfall 136,274
  - their autonomisation vis-à-vis the societas 139,283
- Wealth
  - in the conservative sense 363f.178,358,
  - at Ruskin 456f.
- Religion
  - its separation from (modern) po litics f77,142.
  - its utilitarian view 148,377f.
  - and the state in the conservative understanding 277ff, 332,390
  - and politics 277
  - their anthropological roots 332
  - their aesthetisation380 £, representation449,455
  - Difference between parliamentary and static R. 115ff., 308ff.
- Revolution
  - as the perfection of sovereign statehood 208,232
  - Transformation of political R. into social 209,298
  - as a religious phenomenon 222,329
  - its historical-philosophical over-arching 342ff.

- as man's rebellion against God 345,349
- as a violation of nature 346,347
- its conservative explanation ff.347
- and crisis of capitalism 365f.

Romance

- their subjectivism and sentimentalism. 325
- their term 382f.
- no "spatromancy" 384ff.
- and revolution at Maurras 463

Sacularisation

Sovereignty 70,78,87,209,378

- the fight against modern S. as a feature of conservatism f.24,63, 78,208,226ff., 257
- no violence of *societas civilis* is sovereign in the modern sense 69(,113
- its modern term ff.72
- their traditional term f.74,95, (182, 188,226,227 ff., 233
- their modern ideological background 78-80
- traditional use of "sovereign" f97.
- their exposure to their primordial enemies 106,190f.
- as a feature of modern statehood 112
- the problem of S. in England et seq.184
- and contract theory 267
- and modern state 271,273

Social Darwinism

Socialism,52,414,417,418,473 see Democracy,

Capitalism-

- critique, man social policy
- as a charitable activity 432, 437,441
- as anti-liberal and anti-capitalist waf- fe 437f.,433,436,440 f.
- and the State 433f., f.436,438,439,441, 445
- and Conservative Party 435f.
- The ambiguity of the Christian attitude to it 436, 437,442

Welfare state, see Welfare state

State (cf. democracy, common good, society, church, rights, social policy, state policy, state purpose, welfare state, *societas civilis*).

- its separation from society and the demise of conservatism 23
- his victory over the bourgeois society and the demise of liberalism 23

- and the dissolution of *societas civilis* 27
- and economy f35,420., 422f., 467
- as a despot in an atomized society... 42
- and contemporary *biirgertum* 47 f.
- conservative" call for its strengthening 59(
- as the highest purpose on Earth 77
- its separation from society as a consequence of modern sovereignty 83
- as a disciplining power 110
- its monopolisation of politics and its separation from ethics 138 ff, 356f., 362
- ... his conservative submission to ethics 147
- Structure of the State apparatus and its consequences et seq.169
- Structure of the state apparatus in England f192., f195.
- and the dissolution of the *civitas christiana* 211
- Conservative call for dismantling the state 173, 240
- his campaign against the revolution ff.246
- in the conservative sense of "*societas*" ff.271
- and society at Stahl 275 f.
- and religion et seq.277
- as a reversal of the structure of *societas civilis* 77,283
- as a machine 283
- Ambivalence of conservative attitudes towards 285(
- and nation 287
- and capitalism 355 f.
- and the division of the unity of the social 372
- its monopolisation of violence and its separation from society 403
- and nobility in Germany f412,414,426.
- and society at Maurras 467f.
- ... "authoritarian" and "total" p. 474, 483, 489(
- and society in the "conservative revolution" et seq.488
- and corporatism 496 ff. Law of State Emergency 247, 256
- State Council
- as a consequence of modern sovereignty 77
- avant la lettre by Machiavelli 139
- as the autonomisation of the human and of human reason 141f.

- its conservative rejection 235, 282 Purpose of the state (cf. common good) 272,283 f.

City

- friihe conservative dislike them 175(
- and nobility 216
- preponderance iiover the country 255,312
- as a centre of capitalist economy and culture 365,395,404,414
- a culturally critical aversion to them 473

Stancle

- their permanent demands 105
- Difference in nature between the state and modern parliamentarism ff.112
- its colourful diversity 119
- their particularistic attitude 120
- Guidelines for the development of the civil service in England 121
- your ideology 123
- their anticlerical bind with the English crown 183, f184.
- their elimination through centralisation and the 215
- at de Maistre 229
- Establishment of its weak points after 1789 241,243,247,286,309f., 312,409
- their re-functioning in a parliamentary sense 311f.

Tax or taxation 117,169, 173ff., 179,193,196,240,284,392,402, 443

Theodicee 345ff.

Theory

- its polemical function f17.
- its secondary importance for life 337f.
- and practice

Tolerance 338

- and permissiveness 33
- as a consequence of modern sovereignty 77
- and separation of private and public, religion and politics 143,277
- their conservative rejection of f277.

Tradition

- their ambiguity and feasibility 21,151
- their decline in mass society 41,44
- their activist defence 102 f. Tradition

- not a precursor to conservatism 14, 15,103, 108,125
- and aristocracy of the Tu110

gend 164

Tyrannicide 103,104,184

Ultras 216f., 251,388

Universalism (cf. human rights) 43, 288,289,290,294,376,410,414,482

Utilitarianism 33,43,377,396,398, 419,448, 482,487

Vernunft (cf. man, rationalism)

- The reason of state and the discovery of rationality of purpose 141,149
- Subjugation of the individual V. to the collective 150, 152, 263 Distinction between quinine and natiaal reason in Coke and Burke f151., 332
- Anspriche der autonome Vernunft 154f., 208,212,224,336
- Crystallisation of collective reason in customary law 156
- their weakness 225,335
- revolutionary reason as opposed to nature 331
- for better or worse at Burke 33tf.
- at Maistre 333
- at Miiller and Coleridge 334
- at Bonald 378
- their anchoring in the supra-individual. 335

Contract theory

- Contrast the modern to the scholastic 127,129f., 132,136
- Locke V and the Whigs 201
- as a pioneer of the revolution 212
- its conservative rebuttal 266 ff.
- and modern sovereignty 267
- at Haller f267
- at Moser f268.
- at Burke 269 et seq. Volkerrecht 147,281

Volkischer Gedan ke f414,431,473,474,475., 479,480f.

People

- in the sense of "nobility" or as the epitome of the oikos leaders f92., 95,100,104116,134
- legitimises Parliament 191
- its rights are not original 229,242

- in the conservative sense 306f.235,264,
- in the "national" and,, "legal" sense. 289
- in the sense of modern statehood 310
- with the young Disraeli community 397413f.
- People's Sovereignty 223,205,214, 230, 232, 235,280,28288,299,308,310,323,32347
- Voluntarism 223,379
- Prejudice 332,333

- suffrage , 43,259308,392,398,415, 425, 426,433,435 f., 458,496,497
- right of resistance (cf. activism)
- his death 100f.74., 110,184,240
- as an expression of conservative activism f102., 208,237
- its development 103
- Privilege of the nobility 103f.
- and divine right 137
- its revolutionary reinterpretation of economic liberalism229
- its social and cultural consequences 43ff.

ancien regime

- Griinde its idealization f.215, 237f., 315,348 (389., 460,463
- arcana imperii 145
- auctoritas 128f.

- civitas christiana 287,288
- common law 150( , 190(, 157,188,197,219
- coup' detat coustume144,256 (cf. lex)
- and law in Bodin 73
- at Coquille f155.

- empire 97
- imperium merum72 , 75

justitia distributiva, s. justice laissez-faire

- 52,180,195,307,319,398, 422,435
- leges fundamentales or lois fondamen tales133 f., f228,229., 238,239,262
- lex

- freihe conservative polemic against it 180(
- his marriage of Mill with religious and moral values 422
- vs. paternalismin the Conservative Par ty 423f.
- vs. political liberalism 431
- and "conservative revolution"471,483, 484,486 ff.
- and corporate thought494 , welfare495
- as the purpose of the sacral state ( 78,221,283,304,336, 355
- Welfare state
- old and neo-liberal polemics against him (, f32,33,45,50., f56,59,393,421.,486,487 496
- its expansion after the Second World War 45(

- Centralisation 44,214,251, 255, 258,283, 284, 286, 310,393, 396462, , 486,488
- Interest (prohibition)
- 179Guild system 180f.

- Contrariión to voluntas 71
- Detachment from the ius 74,220
- and consuetudo
- lex157 salica 106

- pactum societatis ff., 127201
- pactum subiectionis 128ff.,
- populus201,238 (cf. people) 134
- potestas f128.135,262, , 268,279
- potestas absoluta 96,97
- potestas coerciva 131
- potestas directiva
- pouvoir,131 s.
- potestas
- pouvoir absolu vs. pouvoir arbitraire 97f. , 228
- pouvoirs intermediaires f165., 213,239
- princepslegibus solutus 91,157

regalia 114,115

- societas civilis (cf. society, God, India, nation, 552 law, state).
- its legal opinion ff.65

- as a socio-politically polycentric and ideologically unitary structure 77,282f.
- it is greeted and supported by the oikos leaders 265,268
- their primacy over the governmental administration126.
- the process of their creation f127.
- the independence of their structure129, 261
- she knows no contrast between po pulus and rex 134,172
- their ethical purpose 136 f., 260,270,276,356,371

- the unity of ethics and politics in its 138
- their nature 159
- their defence after f1789238., 246, 260ff.
- the thesis of its unfeasibility and its normative implications 260ff.
- Unity of all social spheres in its 356f., 359
- their asthetized representation superioritas382 (summa potestas, maiestas) 75

verum factu m convertuntur  
volonte75 generale 218,292